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REPORT
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IMMIGRATION ACT OF 1988

FEBRUARY 26 (legislative day, FEBRUARY 15), 1988.—Ordered to be printed

Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2104]

The Committee on the Judiciary reports an original bill (S. 2104) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States and recommends that the bill do pass.

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I. PURPOSE

The purpose of the committee bill is to reform our current system for admitting immigrants so that it more faithfully serves the national interest, by increasing flexibility and by creating the opportunity to immigrate for persons from nations which are shortchanged by current law. The provisions of this bill will accomplish these objectives while maintaining the priority we have traditionally given to those with family connections in the United States, and without departing from the principles of equity and fairness established in the 1965 act reforms.

The committee bill will create two separate immigrant-visa "preference systems": one for close family members, another for "independent" immigrants. This two-track system was suggested by the Select Commission on Immigration and Refugee Policy, and its was part of both S. 1611 and S. 2050. At least 55,000 visas will be added to the independent category, and they will be available to users of the present immigration system and to earlier sources of immigration to the United States. Because the lion's share of the visas would still be reserved for the family members of recent immigrants, and because visas will be available to persons from every country in the world, the intent of the 1965 reforms is followed.

By redressing some of the imbalances in immigration which have inadvertantly developed in recent years, we will open our doors again to those who no longer have family connections in the United States. By placing more emphasis on the particular skills and qualities that immigrants possess, the bill will bring our present immigration policy more in line with the national interest. The committee estimates, for example, that many countries which send only a few hundred immigrants per year to the United States may eventually receive a much fairer share of our available immigrant visas. The overall benefit of immigration to our country will increase, because a larger proportion of immigrants will be subject to labor market and skills tests.

As outlined below, the committee bill follows the 1981 recommendations of the Select Commission on Immigration and Refugee Policy, which laid the basis for the 1986 Immigration Reform and Control Act. That bill dealt primarily with the control of illegal immigration. It did not, however, addresses the other half of the Select Commission's recommendations for needed reforms of our legal immigration system.

The key features of the committee bill are the following:

First, it establishes a national level of immigration within which all new permanent entrants would be counted, except refugees and asylees, who would continue to be admitted under the provisions of the Refugee Act of 1980. The level is set at 590,000 for the first 3 years (100,000 higher than the current level to allow for the new point system, the family preference backlogs, and growth in the category of immediate relatives of U.S. citizens). Within that level, the bill distributes the family connection visas to give greater priority to the closest family members.

Second, the bill creates a new category for "independent immigrants." Visas would be available for those with skills that

are in short supply in the United States, and for those form nations who have been unable to use the current system because thay have no family connections in this country. This is accomplished by retaining the current preferences for persons of exceptional ability and skilled workers, and by adding at least 55,000 visas. The bill allocates the additional 55,000 numbers in the independent category according to a "point system," similar to systems currently used in Australia and Canada.

Third, the bill assures a regular review of the immigration system will be undertaken by requiring the administration to report every year on the basis social and economic effects of immigration on our country, by requiring the administration to consider, and, if appropriate, to recommend changes in the national level of immigration every 3 years, and by allowing Congress to accept or reject such modifications under expedited parliamentary procedures.

Finally, the bill provides an additional 30,000 visa numbers for 3 years to reduce the existing backlog in the preference for brothers and sisters of adult U.S. citizens, after which the visa numbers will be returned to the independent immigrant category.

The committee believes the time has come for Congress to take up where it left off in 1986 and address the unfinished agenda of immigration—the reform of our *legal* immigration system.

The committee bill is a balanced attempt to serve the national interest; it preserves the immigration opportunities for those who have close family connections in this country; it stimulates immigration from the earlier sources of immigration to our country that have contributed so much to America in the past; and it promotes the entry of those who are selected specifically for their ability to contribute their needed skills and talents to the development of our country. This reform will both continue and strengthen one of the oldest and most enduring themes in our Nation's history—America's immigrant heritage.

II. Summary of Bill's Provisions

1. GENERAL PROVISIONS

—Establishes a national level of immigration for all immigration categories. The level for the first 3 years will be 590,000, which reflects current flow, plus at least an additional 100,000 visas:

—Under this overall level, 470,000 visas in the first 3 years (440,000 thereafter) would be reserved for family immigration, and 120,000 visas (150,000 after 3 years) would be for the new "independent" category.

—Admission of refugees remains governed by The Refugee Act of 1980 which requires annual consultations and limits.

—Separates the family preference system from a new "independent" category and creates a point system for 55,000 new visas. Under the new bill the family preferences will no longer compete with the jobs-related "independent" preferences.

—Reforms the current family preferences to give higher priority to the closest family members of citizens and permanent residents.
—A modified "sunset" provision is included to assure all those affected by these changes that Congress must review their implementation and effects after 3 years. The review would include the effects on family reunification and social and economic conditions in the United States, and other relevant concerns. A Presidential report to the Congress will automatically allow expedited parliamentary procedures to be used to review the President's recommendation. If changes are needed, under the modified "sunset" provisions, Congress can act constructively and swiftly.

2. REFORM OF FAMILY PREFERENCES

—Maintains unrestricted admission of the immediate family of U.S. citizens.
—Maintains the current number of family preference visas (216,000 a year) and, for 3 years, adds 30,000 for backlogs in the brother and sister preference.
—Allocates a higher percentage of these visa numbers to spouses and children of legal permanent residents (65 percent compared to 26 percent under current law); this will deal with the heavy backlog that exists today in this preference—which in some countries is 7 to 9 years.
—Limits the preference for adult sons and daughters of legal permanent residents to unmarried children under 26 years of age.
—The preference for brothers and sisters of adult U.S. citizens is retained, but limited to never-married brothers and sisters; pending claims under the current system are grandfathered in and 30,000 new visas go to this backlog.
—Nearly all of the above changes were recommended by the Select Commission on Immigration and Refugee Policy.

3. INDEPENDENT IMMIGRANTS

—The existing preferences for professionals, persons of exceptional merit and persons with needed skills, are combined with the new 55,000 point system numbers to create an "independent" system of 150,000 visas annually (less 30,000 for 3 years).
—The additional 55,000 visas are for applicants who qualify on the basis of the new point system. The selected immigrant category does *not* require individual labor certification, which has been a major obstacle to "independent" immigrants until now.
—More visa numbers become available to "independent" immigrants who do not have family connections in the United States necessary to qualify for the current family preferences. Under current law, 90 percent of current immigrant flows are family related; only 10 percent reflect immigrants selected on the basis of labor market needs.
—Establishes an employment generating investor visa requiring at least $2 million in new capital that will generate employment for at least 10 Americans or legal residents. Up to 4,800 conditional entry visas are made available annually, requiring

that the investor must return to INS in 2 years to adjust his status to permanent resident alien, which will be done only if the investment continues to create employment for the requisite number of American workers, otherwise the investor is subject to deportation.

—The new "point system" for the 55,000 additional selected immigrant visas will be administered under a system estabished by regulations, but based upon the following categories and points:

POINT SYSTEM

	Maximum points:	Percent of total
Age (10 for age 21 to 34, 5 for age 34 to 45)	10	11
High school	10	11
Bachelor's degree	10	11
Graduate degree	5	5
Occupational demand	20	21
Occupational training or work experience	20	21
English language skills	20	21
Total	95	

Note.—Needed to apply: 50.

COMPARISON OF VISA NUMBERS UNDER CURRENT LAW AND THE COMMITTEE BILL

[Based on fiscal year 1987 data]

	Current law	Committee bill	Changes in definition of category
National level of immigration	None	590,000 total: [1] 470,000 family; 120,000 independent.	
I. Family preferences:			
Immediate relatives (spouses and minor children; outside preference system).	No limit	No limit; (220,000 entered in fiscal year 1987).	Same.
1st preference (unmarried adult sons and daughters of U.S. citizens).	54,000	33,000 (15 percent) [2]	Same.
2d preference (spouses and sons and daughters of residents).	70,200	143,000 (65 percent)	Limited to spouses and unmarried children under 26.
4th preference (married sons and daughters of U.S. citizens).	27,000	22,000 (10 percent)	Same.
5th preference (brothers and sisters of adult U.S. citizens).	64,800	22,000 (10 percent)	Limited to unmarried brothers and sisters 5th preference.
Reduction of 5th preference backlog	None	30,000	New.
Total family preference	216,000	470,000 [1]	
II. Independent:			
Special immigrants (ministers of religion, etc.).	No limit	6,000 (5 percent) [3]	Same.
3d preference (professions and exceptional ability).	27,000	27,600 (23 percent)	Advanced degree required.
6th preference (skilled and unskilled)	27,000	27,600 (23 percent)	Limited to skilled workers only.
Employment generating investors	None	4,800 (4 percent)	New.
Selected immigrants	None	55,000 (45 percent)	New, administered according to new point system.
Total independent	54,000	120,000	

[1] For first 3 years.
[2] Percent going to each category after numbers reserved for immediate relative of U.S. citizens.
[3] Percent going to each category of toal independent visas.

III. Need for Current Legislation

In addition to the general purposes outlined above for this legislation—namely, to reform the legal preference system and to promote nonfamily, "new seed" immigration—the committee bill also addresses several other needed reforms.

BACKLOGS

One of the goals of the committee bill is to address the issue of the escalating backlog in 5th preference visas for brothers and sisters of adult U.S. citizens. As the accompanying chart illustrates, 5th preference backlogs have grown enormously in recent years, numbering 1,210,610 in 1986, or 63.6 percent of all pending visa cases worldwide. At the current rate at which the 5th preference backlog is being met for most countries—the waiting list is moving by just 4 months a year—it will take an applicant who receives an approved petition this year approximately 18 years to get his or her visa—or until the year 2006. And it is even longer for high demand countries such as the Philippines, Mexico, India, and China. Such lengthy and growing waits can hardly be described as family reunification; they are false hopes and illusions.

The problem is that, under current law, all brothers and sisters—unmarried and married—are eligible, which means that in this category only a minority of the visas go to actual brothers and sisters, and the majority of the visas go to the brothers-in-law, sisters-in-law, nieces, and nephews of the U.S. citizen. For example, in 1986 a total of 70,401 visas went to 5th preference as follows:

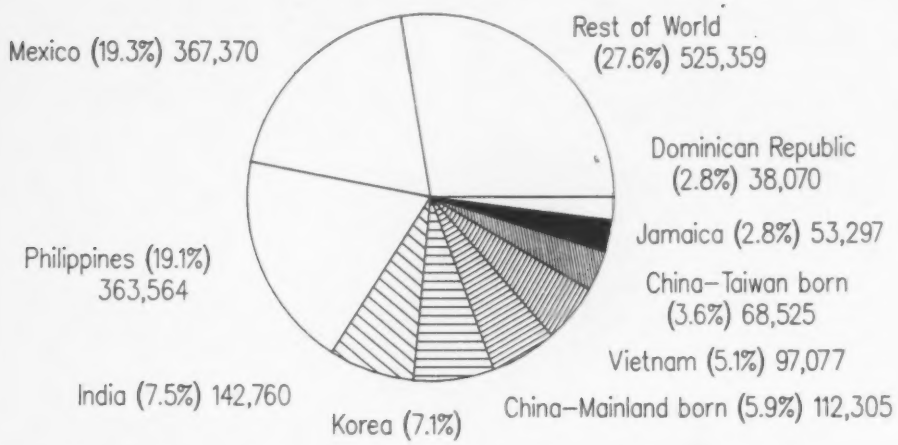
Brothers/sisters (35 percent)	24,837
Spouses (in-laws) (22 percent)	15,321
Children (nieces/nephews) (43 percent)	30,243

In short: only one-third actually went to the brother or sister of the U.S. citizen. Further, inclusion of married brothers and sisters also creates an "immigration tree" by making the in-laws, nieces and nephews also ultimately eligible to petition for yet other family members, thus using up a disproportionate share of the visas. This is sometimes referred to as "chain migration".

By limiting 5th preference to never-married brothers and sisters, the law will recognize the family's brother or sister who is still most likely to be part of the family unit. It will also hold out the prospect that the backlog for this more immediate family member will be shorter in the years ahead, especially with 30,000 additional visas provided each year for 3 years to begin to deal with this backlog.

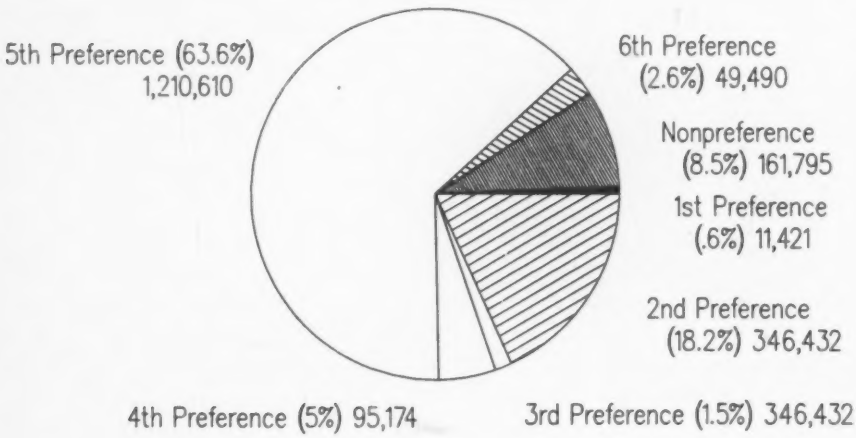
Pending Visa Cases By Country

JANUARY 1986



Pending Visa Cases By Preference

JANUARY 1986



PREFERENCE—CURRENT WAITING PERIOD OF VISAS

[As of February 1988]

Country	1st	2d	3d	4th	5th	6th	Nonpreference
All except those listed below	No wait	1 yr 5 mo	4 mo	No wait	5 yr 10 mo	13 mo	No visas available
China-mainland born	No wait	1 yr 5 mo	4 mo	No wait	8 yr 1 mo	3 yr 3 mo	No visas available
Dominican Republic	No wait	2 yr 4 mo	No visas available [1]	No visas available	No visas available	No visas available	No visas available
India	No wait	1 yr 5 mo	1 yr	No wait	6 yr 5 mo	2 yr 1 mo	No visas available
Korea	No wait	1 yr 5 mo	4 mo	No wait	7 yr 1 mo	3 yr 3 mo	No visas available
Mexico	No wait	10 yr 1 mo	4 mo	8 yr	12 yr 1 mo	4 yr 4 mo	No visas available
Philippines	5 yr 6 mo	6 yr 7 mo	17 yr	7 yr 9 mo	11 yr 5 mo	3 yr 7 mo	No visas available
Hong Kong	No wait	5 yr 1 mo	4 mo	5 yr 2 mo	10 yr 5 mo	2 yr 7 mo	No visas available

[1] All 20,000 available visas are taken up by 1st and 2d preferences.

PROMOTING MORE IMMEDIATE FAMILY REUNION

The second goal for limiting 5th preference and transferring about 42,000 visas from the 5th preference to the 2nd preference for spouses and unmarried children under 26 of legal residents, is to promote more immediate family reunion. In recent years backlogs have been growing worldwide in this preference for immediate family members of residents, and will likely continue to grow unless additional visas are made available. The new demand will come, in part, through the family reunification needs of those now being legalized under the Immigration Reform and Control Act of 1986. Most immigration experts anticipate that within 3 years there will be a growing demand for 2nd preference visas—visas for the closest of family members of permanent residents: spouses and unmarried children under 26.

PROMOTING MORE EQUAL ACCESS TO IMMIGRATION SYSTEM

A further purpose of the committee bill is to open the immigration system to those now virtually excluded. Currently the vast majority—some 85 percent—of U.S. immigration comes from Latin America and Asia, from countries where there still exist immediate family ties with U.S. citizens and legal permanent residents. Countries whose citizens no longer have close relatives in the United States have little opportunity to even come close to the per-country ceiling in preference categories.

The new, "independent" category of 55,000 visas, distributed on the point system, would be a step in equalizing access to immigrant visas and to opening new opportunities for immigrants without family connections in the United States.

IV. Immigration Policy and the National Interest

The committee intends that the national interest be a factor considered when revising our immigration laws. Indeed, when the Select Commission on Immigration and Refugee Policy issued its final report in 1981, it entitled it: "U.S. Immigration Policy and the National Interest." This theme is continued in this legislation.

Father Hesburgh, in his introduction to the Select Commission's Final Report, wrote the following:

> To the question: Is immigration in the U.S. national interest?, the Select Commission gives a strong but qualified yes. A strong yes because we believe there are many benefits which immigrants bring to U.S. society; a qualified yes because we believe there are limits on the ability of this country to absorb large numbers of immigrants effectively.

The proposed legislation follows these principles faithfully.

The committee bill endorses the Select Commission's "strong yes" by adding 100,000 visas to the present annual level of legal immigration to the United States. This is in addition to the current level of permanent immigration, which is as great as the permanent immigration allowed by all other countries of the world, combined. We should not fail to recognize the generosity of U.S. immigration policy—historical, current, and as proposed by this legislation.

The legislation endorses the Select Commission's "qualified yes" by recognizing that there are certain limits to our Nation's ability to effectively absorb immigrants. For the first time, a national level of immigration is established. The executive branch will be required to review the social and economic effects of immigration on the Nation, and then may make proposals for the revision of this national level every 3 years. Congress may then approve or disapprove of any revision in expedited procedures. This process will ensure that factors in the national interest relative to the formation of immigration policy will be considered, and that Congress will make an informed determination on the national level of immigration at least every 3 years.

The committee has also focused on the national interest by increasing the number and proportion of visas for immigrants who would benefit the U.S. economically and otherwise, and by reserving immigration rights for the closest family members of recent immigrants, by providing for immigration opportunities for persons from a larger number of countries, and by establishing a national level of immigration that is periodically reviewed. It intends that this standard, that of the national interest, be the one considered for this and all future revisions of U.S. immigration law.

V. History of Current Legislation

Few legislative proposals have had greater scrutiny or consideration than the immigration reforms contained in the pending legislation. For more than a decade, reforming the system by which we select and admit immigrants has been the subject of interagency task forces, special commissions, and lengthy debate in Congress. The pending legislation reflects this study and deliberation, and it represents a genuine consensus on what needs to be done.

Both the Ford and Carter administrations advanced proposals for immigration reform. In 1978, Congress recognized the urgent need for a comprehensive review of immigration law and policy—regarding illegal immigration as well as legal immigration—and established the Select Commission on Immigration and Refugee Policy, chaired by the Reverend Theodore Hesburgh. The Select Commission submitted its final report to the Congress on March 1, 1981, after 2 years of substantive hearings and studies, and a distinguished record of deliberation.

The structure of the pending legislation finds its origins in the 1981 reommendations of the Select Commission, including, for example:

—The separation of two types of immigrants (family and independent) into distinct admissions categories;

—The creation of a new area of general immigration within the independent category, such as the proposed "point system"; and

—The continuation of family reunion as a major element of immigration.

These recommendations were adopted by near unanimous vote of the Commission and reflect a clear consensus on the reforms proposed in the committee's bill.

Various other aspects of the legislation are the product of the past 7 years of Senate debate. A more limited definition for the brother and sister preference, for instance, passed the Senate in 1983.

The Select Commission's far-reaching recommendations became the basis for other subsequent immigration reform initiatives. President Reagan used the Commission's proposals to form his administration's immigration reform strategy in 1981. And comprehensive immigration reform bills were introduced in the 97th, 98th, and, finally, the 99th Congresses, all reflecting the Select Commission's work.

In the Senate, under the leadership of Senator Simpson, then chairman of the Subcommittee on Immigration and Refugee Policy in 1981–86, dozens of hearings were held on the Select Commission's recommendations and the Senate's omnibus immigration reform bills. The hearings and the bills introduced in those Congresses addressed the need for reform of laws related to illegal and legal immigration. At the same time, similar proposals were considered in the House of Representative under the leadership of Judiciary Committee Chairman Peter Rodino and Representative Romano Mazzoli, chairman of the House Subcommittee on Immigration, Refugees and International Law.

In the 97th Congress alone, the Senate subcommittee held no fewer than 16 hearings and 5 consultations on immigration reform. Many of these dealt solely and specifically with the need to deal with our legal immigration system. And 7 days of hearings in the 98th and 99th Congresses also covered legal immigration issues.

However, in the end, Congress opted to limit the scope of the reform legislation only to problems of illegal immigration. Not dealt with in the landmark Immigration Reform and Control Act of 1986 were issues addressed by the Select Commission on Immigration and Refugee Policy related to much-needed reform of legal immigration.

With illegal immigration reforms and controls now firmly in place, the Subcommittee on Immigration and Refugee Affairs, under the chairmanship of Senator Kennedy, returned its attention to legal immigration questions. On August 6, 1987, Senator Kennedy introduced S. 1611; the subcommittee held two hearings on this bill, on October 23, 1987, and December 11, 1987. The December 11 hearing was also devoted to a review of Senator Simpson's proposals in this area, which he subsequently introduced on February 4, 1988, in S. 2050.

On February 4, at a meeting of the Judiciary Committee, Senator Kennedy and Senator Simpson announced that they had been working over the previous weeks to fashion a compromise bill. The committee bill represents that compromise, and reflects both the work of the Select Commission as well as the two immigration bills sponsored earlier by Senator Simpson, which passed the Senate twice in 1982 and 1983.

VI. Section-by-Section Analysis

SECTION 1: SHORT TITLE; REFERENCES IN ACT

The Short Title is "Immigration Act of 1988"; references are to the Immigration and Nationality Act.

SECTION 2: NATIONAL LEVEL OF LEGAL IMMIGRATION

Subsection (a) establishes a national level of immigration—590,000 per year—and describes the categories of immigrants that are included within that national level.

470,000 visas per year for the first 3 years are provided for immediate relatives of U.S. citizens and family connection (preference) immigrants. This figure represents the current level of family-connected immigration with additional visas for growth in immediate relatives and 30,000 visas for the first three years for the backlog in fifth preference.

There is no numerical limitation or restriction on the admission of immediate relatives of U.S. citizens, which take precedence over the other family connection visas. The immediate relative admissions and the 30,000 for the fifth preference backlog are subtracted from the 470,000 visas to determine the level of family preference immigration.

In addition, 120,000 visas per year are provided solely for independent preference immigrants. After 3 years the 30,000 visas allocated to the fifth preference backlog are transferred to the independent category. In short, the total level of legal immigration is set at 590,000 per year divided into the separate tracks for family-connection immigrants (470,000) and independent immigrants (120,000), at least for the first 3 fiscal years.

This subsection also requires the Attorney General, in consultation with the Departments of State, Labor, Housing and Urban Development and HHS, and the Environmental Protection Administration, to prepare and submit to the President and the Congress an annual report on the social, economic, and environmental impacts of immigration. In addition, beginning 3 years after the date of enactment, and at 3-year intervals thereafter, the President will submit to Congress a determination to maintain, lower, or raise the numerical levels set for family connection immigration and independent immigration. If the President's determination contains an increase or decrease in the national level of immigration of 5 percent or less, then the determination takes effect unless Congress objects within 5 months. Special procedures are established to expedite consideration of any objection. If the proposed increase or decrease in the national level is greater than 5 percent, Congress must act affirmatively to approve the proposal. Similar special procedures are available for this approval.

Subsection (b) of section 2 sets an annual limitation on preferece immigrants from each foreign state. That limitation is no more than 7 percent per country of the number of visas available in the family connection preference category worldwide, and 7 percent of the number of visas available in the independent category, worldwide. In the family connection category, if "immediate relative" immigration from any single foreign state exceeds either the per

country limitation (described above) or its level in the previous fiscal year (whichever figure is higher), the amount of any such increase in admissions of immediate relatives (but no more than half of that state's limitation) is subtracted from the family preference visas allotted to that foreign state.

SECTION 3: PREFERENCE SYSTEM FOR ADMISSION OF IMMIGRANTS

Subsection (a) of amended Section 203 changes the precentages for allocation of family connection visas and redefines the beneficiaries of two of the preferences. The following categories are recognized, in the following order, with visa number measured as a percentage of the total number allowed for family connection immigrants under Section 2: (1) unmarried adult sons and daughters of U.S. citizens, 15 percent; (2) spouses and unmarried sons and unmarried daughters (under age 26) of permanent resident aliens and pending petitions of unmarried sons and daughters over 25, 65 percent, plus unused visas form the previous category; (3) married sons and daughters of U.S. Citizens, 10 percent plus unused visas from the previous two categories; and (4) never married brothers and sisters of adult U.S. citizens and pending petitions for married brothers and sisters, 10 percent, plus unused visas from the previous three categories. In addition, 30,000 visas are provide for the fifth preference backlog for the first 3 years. A "never married" beneficiary is defined as an individual "who has never married" beneficiary is defined as an individual "who has never been married or whose marriage was annulled or otherwise legally determined never to have had effect."

Subsection (b) of amended Section 203 creates a separate preference system for independent immigrants. The following categories are created, in the following order, with available visa numbers measured as a percentage of the numerical limit on independent immigrants (120,000 for the first 3 years, and 150,000 each year thereafter): (1) special immigrants, 5 percent; (2) aliens of exceptional ability or members of the professions holding advanced degrees, 23 percent; (3) skilled workers for which qualified workers are not available in the United States, and members of the professions holding bachelor's degrees, 23 percent; (4) aliens who have invested, or are actively in the process of investing, at least $2 million in a new commercial enterprise which will create at least 10 U.S. jobs, up to 4 percent; and (5) selected immigrants, admitted without requirement of labor certification or U.S. job offer, and chosen on the basis of a point system. Visa numbers not used in the first four categories of independent immigrants go to the fifth category.

The point system gives consideration to aliens with the following skills or attributes: (1) desirable age (21–44); (2) education (high school, bachelor's degree, graduate degree); (3) English language skills; (4) work in an occupation where an increase in demand for workers has occurred, and where the supply of U.S. workers will not meet that demand; and (5) specific work experience or training in such an occupation. Of a possible 95 points, 50 would be required to qualify to register.

Under subsection (c) of amended Section 203 derivative status is granted to spouses and children of all the categories of independent immigrants indicated above except selected immigrants.

Subsection (d) of amended Secton 203 continues the current chronological order of consideration for all visa categories except selected immigrants. In the category of selected immigrants 20 percent of the visas available will go to registrants scoring 20 points or more; the remaining 80 percent of the visas will be drawn from all registrants scoring 50 points or more. If there are more qualified applicants than visas available for selected immigrants then the selected immigrants will be chosen on a random basis from among the qualifying applicants.

Subsection (f) of amended Section 203 provides for the termination of registration for an alien who fails to apply for an immigrant visa within 1 year of its availability, unless the alien provides that failure to apply was due to circumstances beyond his control. This subsection also repeals provisions for visas under Section 203(a)(7) (non-preference visas.)

Subsection (b) of Section 3 establishes changes in petitioning procedures and provides for the filing of a notice of continuing intent to be admitted to to the United States in the 2 fiscal years previous to the fiscal year in which the immigrant visa becomes available. Provisions are made for the filinig of a petition for special immigrant category with the Attorney General, with the exception of immigrants who are former employees of the U.S. Government abroad who have been recommended for special immigrant status. The latter, if notificed of an approved recommendation, would file with the Secretary of State. This subsection also authorizes the Secretary of State to establish regulations for the filing of applciations for selected immigrant status. The place of filing may be designated to be inside the United States, but the applicant must be physically outside the United States at the moment of application. The Secretary of State may designate an application period for the filing of selected immigrant petitions and after such period may issue visas for selected immigrants for the next 2 fiscal years. Misrepresentation in applications for selected immigrant status is deemed a violation of section 212(a)(19). This subsection also establishes the "unmarried" sons or daughters of permanent residents who enter under the provisions of the second preference may not subsequently petition for spouses whom they married and later divorced prior to gaining the benefits of this preference.

Subsection (c) of Section 3 revises Section 212(a)(14) to exclude certain classes of immigrants unless the Secretary of Labor certifies that there are not sufficient qualified workers available in the United States and that employment of the alien will not adversely affect the wages and working conditions of workers in the United States. The Secretary of Labor may substitute for that "national standard" a "regional" certification that there are not sufficient workers who are able, willing, qualified, and available at the time and at the place where the alien is to perform the skilled labor. The Secretary of Labor may use labor market information without regard to specific job opportunity, but if the determination is adverse the Secretary of Labor shall make a job specific certification if the employer submits evidence that such specific certification

would result in a different determination. This subsection also calls for a study of the labor certification process in 1992 to determine whether the changes in the laws have resulted in a more simplified and expeditious processing of labor certifications.

SECTION 4: DETERRING IMMIGRATION-RELATED ENTREPRENEURSHIP FRAUD

Section 4 establishes a 2-year conditional basis for permanent resident status for those aliens and their dependents who receive the benefits of the employment-generating investor visa. The section outlines procedures to be followed in making as determination on the status of the alien based on the alien's having complied with the requirements of the statute.

SECTION 5: MISCELLANEOUS AND TECHNICAL CHANGES

Section 5 makes miscellaneous, conforming, and technical changes to the Immigration and Nationality Act.

SECTION 6: USER FEES

Section 6 provides for user-fees for the processing of selected immigrant visas. In addition, a fund of up to $20 million is credited to the Department of State from fees collected by consular officers to pay the expenses of research and development of visa and passport functions.

SECTION 7: EFFECTIVE DATES AND TRANSITION

This section makes the effective date of the bill October 1, 1989. It shall apply to all visas issued beginning with fiscal year 1990.

VII. Committee Intent

Although this is not an exclusive statement of the committee's legislative intent, the following addresses aspects of the legislation which the committee wishes to discuss in detail:

SECTION 2: NATIONAL LEVEL OF IMMIGRATION

The worldwide level of family connection immigration is set at 440,000 persons per year (plus an additional 30,000 per year for the first 3 years). Refugees and asylees are *not* included in this level. Immediate relatives of U.S. citizens continue not to be subject to numerical limitation, and thus their annual immigration may exceed 440,000 per year (the present number of immediate relatives is approximately 220,000 per year). However, the number of immediate relatives immigrating in a fiscal year is subtracted from 440,000 to determine how many family-connection preference immigrants (described in amended Section 203(a)) will be admitted in the following fiscal year. The committee wishes to emphasize that preference system visas under amended section 203(a) will only be available after the subtraction has been performed.

The worldwide level of independent immigration is set at 150,000 per year (less 30,000 for the first 3 years). This level of independent immigration is not affected by the level of immediate relative or other family connection immigration. Immigrant visa distribution

under amended Section 201(c) and Section 201(d) will be interdependent only when the maximum number of visas in either 201(c) or 210(d) are not actually issued in a fiscal year. In that case, the difference between the maximum number allowed and the number actually issued in one section may be allocated for use by the other subsection.

The 30,000 visas per year allocated for 3 years to the backlog category provide limited, expedited treatment for certain visa applicants under the previous immigrant preference system. The return of the 30,000 visas to the independent category will occur in the fourth fiscal year. The committee emphasizes that this special treatment given to a certain backlogged preference category is justified because future petitioning under this category is being limited.

Amended Section 201(e) provides for a triennial review of the numerical levels described in amended Section 201(c)(1)(A) and 201(d)(1)(A). This provision is intended to ensure that the administration and Congress regularly consider, and when necessary revise, the levels of immigration to this country. The committee directs the executive branch to consider the factors described in paragraphs 201(e)(1) (A), (B), (C), and (D) when seeking to revise the numerical levels, and to justify any proposed revision based on those factors.

Section 202 is amended to revise the current method by which maximum levels of immigration are set for individual countries. Each country may receive up to 7 percent of the total preference visas available for family connection immigration, and up to 7 percent of the total visas available for independent immigration. However, a country's unused visas in one category may not be transferred to accommodate excess demand in the other category. In addition, amended Sections 202(a)(2)(C) and 202(a)(3)(B) are intended to deal with hypothetical situations when future worldwide visa demand may not equal the number of visas available. In every other circumstance, the current per-country limitations apply.

SECTION 3: IMMIGRANT PREFERENCE SYSTEM

The family connection preference system, described in amended Section 203(a), reflects the committee's recognition that, as there are only a finite number of visas available for immigrants with family connections, our first obligation is to the closest family members. Thus, the previous preference system is revised to increase the percentage of visas allocated to the spouses and unmarried sons and daughters (under 26 year of age) of permanent resident aliens. The allocation to the married sons and daughters (and their families) of citizens and to the never married brothers and sisters of citizens, has been correspondingly reduced. In addition, the distinction between the terms "unmarried" and "never married" in this subsection is intentional, as explained by their respective definitions in amended Sections 204(a)(1)(4) and 203(a)(4).

The committee's goal in adopting a distinct category of nonfamily immigration is to make more flexible the standards geared to our changing economy to increase the number of admissible immigrants.

However, these adjustments are intended to be incorporated into the Immigration and Nationality Act (INA) in a manner that respects the longstanding principle that "one of [the United States immigration law's] great purposes was to protect American labor against the influx of foreign labor." (*Karnuth* v. *United States,* 279 U.S. 231, 243 (1929)). Consistent with that principle, the added number of immigrants is held to a level that the United States labor market should be able to absorb. Within that limit, given a choice, the committee has concluded that it is better that work for which the United States requires entrants from abroad be done by persons with the full rights of permanent residents, a long-term commitment to this country, and the opportunity to become citizens.

These liberalizing changes should go far toward meeting the legitimate business needs of American employers and by so doing will result in a substantial reduction in the number of nonimmigrant visas otherwise warranted under the labor certification standards of the INA.

In order the the committee's purposes to be realized, it is important, too, that the provisions of the INA governing both immigrant and nonimmigrant visas be administered in a manner that pays scrupulous regard to the immigration law's labor protection principles. In this regard, the committee emphasizes that this bill contains in its revision of INA Section 203(b)(2)(C) language explaining that "[i]n determining whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, univerisity, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability."

This provision does not make a novel point but is rather a specific declaration of what has been Congress' intent in the "exceptional, ability" phrase in the existing third preference and its counterpart language in the nonimmigrant visa provision of the INA. As this language makes plain, these phrases refer to persons who are particularly qualified in their callings, not simply to persons who have callings. The committee, in expanding the number of admissible nonfamily immigrants, is proceeding on the clear understanding that the counterpart temporary visa provision is to be administered in harmony with the new Section 203(b)(2) preference immigration category.

For example, the committee has taken note of, and relied upon, the reasoning of *Bricklayers and Allied Craftsmen* v. *Meese,* 616 F. Supp. 1387 (N.D. Cal. 1985), with regard to the proper scope of the B temporary visa category. At issue in that case was the issuance of B–1 "temporary visitor for business" visas to laborers coming to United States temporarily to do masonry work. The governing provision of the INA, Section 101(a)(15)(B) authorizes visas for aliens "(other than one coming for the purpose . . . of performing skilled or unskilled labor . . .) . . . who is visiting the United States temporarily for business . . ." The INS claimed justification for the visas in an agency Operations Instruction that allowed B–1 classification for persons coming to this country "to install, service or repair commercial or industrial equipment or machinery purchased

from a company outside the United States . . ." The court pointed out that "section 101(a)(15)(B) and 101(a)(15)(H)(ii) of the Act were intended to restrict the influx of aliens seeking to perform skilled or unskilled labor in the United States." The court then concluded that the Operations Instruction "is inconsistent with both the language and the legislative intent [of the two provisions cited just above]" and thus "contravenes the act." (Bricklayers 616 F. Supp. at 1398, 1401, 1403.) the committee's actions in expanding immigration rest on this understanding of the narrow scope of the B. temporary visa category, and, consequently, the narrow scope of any implementing operations, instructions, or regulations.

Amended Section 203(b)(2) refers to members of the professions holding "advanced degrees." The committee intends that an advanced degree be a degree received which requires initial completion of a 4-year course of undergraduate study, followed by at least one academic year of graduate study, and which is normally referred to as a master's degree.

Amended Section 203(b)(3) provides visas for: (1) qualified immigrants who are capable, at the time of petitioning, of performing labor (requiring at least 2 years training or experience) for which qualified U.S. workers are not available, and (2) qualified immigrants who are members of the professions and hold bachelor's degrees. The committee wishes to clarify that the 2-year training or experience requirement applies to the position for which certification is sought, and to the alien at the time of petitioning. The committee further wishes to clarify that an alien who holds a bachelor's degree, and who is not a member of the profession, may receive a visa provided that he meets all the other requirements of amended Sections 203(b)(3)(A)(i) and 203(b)(3)(B).

Amended Section 203(b)(4) is intended to create new employment for U.S. workers and to infuse new capital into the country, not to provide immigrant visas to wealthy individuals. The committee endorses the present investor requirements as described in 22 CFR 40.7(a)(14), Note 1.3 (except for the investment amount and number of individuals to be employed, and except for Note 1.3–6). The term "benefit the U.S. economy" may be used to assess the comparative value to the U.S. economy of the proposed new commercial enterprise. The creation of the requisite number of U.S. jobs need not occur immediately upon immigration of the alien entrepreneur, but the job creation should be completed within a reasonable time—in most cases not longer than 6 months after the alien's admission. Finally, the committee intends that processing of an individual visa not continue under this section if it becomes known to the government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs).

Amended Section 203(b)(5) provides a number of visas to be distributed based on a point selection system. The committee emphasizes that a qualifying score on a visa application in this category only entitles an alien to have his or her application considered for random selection during 2 fiscal years. Such a score in no way entitles the alien to an immigrant visa. The committee also intends that the Department of Labor develop lists of occupations which are experiencing or will likely experience increased labor demand,

occupations which are experiencing or will likely experience a shortage of U.S. workers, and a list of hours worked or time spent in particular occupations which would qualify an alien to receive point under the "training and work experience" category (Section 203(b)(5)(v)). The term "increased demand" in Section 203(b)(5)(B)(iv)(I) means demand for labor only, without regard to the supply of labor.

Amended Section 212(a)(14) describes the standard upon which labor certifications for visas under Sections 203(b) (2) and (3) must be conducted. The "national" U.S. worker availability standard is the preferred standard, but the Department of Labor, in its discretion, may use the alternate "regional" standard outlined in the second sentence of Section 212(a)(14) if this would promote efficiency or otherwise be justified. Additionally, in the case of an employer requesting an individual labor certification after an adverse decision, the "evidence" he or she must submit should be sufficient to establish the reasonable possibility that individual labor certification would be lead to a different result.

SECTION 4: DETERRING ENTREPRENEURSHIP FUND

This section imposes a 2-year conditional status on all aliens, and their dependents, who are issued immigrant visas based on job creation and investment described in Section 203(b)(4). The committee intends, by this section, to encourage all aliens receiving visas in this section to continue their new commercial enterprises so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained.

SECTION 6: USER FEES

The committee recognizes that the point selection system under Section 203(b)(5) will create additional administrative burdens for the Department of State and intends that such system require user fees that will offset the administrative or other costs. Pursuant to subsection (b) of Section 6, the fees collected should be returned, in an amount commensurate with the additional costs, to the State Department for the purposes of administering the system.

VIII. Committee Action

The Committee on the Judiciary considered and discussed the bill on February 23, 1988, and by voice vote, with one dissent, ordered the substitute bill reported out with the recommendation that it be passed by Senate.

IX. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 26, 1988.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate on the Immigration Act of 1988,

as ordered reported by the Senate Committee on the Judiciary on February 23, 1988.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

C.G. NUCKOLS
(for JAMES L. BLUM, Acting Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill No.: S. 1611.

2. Bill title: Immigration Act of 1988.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary, February 23, 1988.

4. Bill purpose: The bill revises the current system which governs the legal entry of immigrants into the United States. Specifically, it sets the national level of immigration at 590,000 per year, which represents the issuance of an additional 100,000 visas over current levels. It gives greater preference to applicants with close family ties within the United States, while at the same time creating a new method of awarding visas to persons with no family connections in the United States. Under this new method called a "point system", applicants will first be rated according to characteristics such as age, education, and job skills. Those who are rated above a certain level are then eligible for visas which would be awarded according to a random drawing conducted by the Department of State.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Revenues:					
Estimated revenues	0	30	10	30	10
Reclassification of revenues as offsetting collections	0	−20	−20	−20	−20
Net revenue effect	0	10	−10	10	−10
Offsetting collections	0	−20	−20	−20	−20
Amounts subject to appropriation action (function 150):					
Estimated authorization level	0	20	20	20	20
Estimated outlays	0	16	18	19	20
Net outlay effect	0	−4	−2	−1	0
Net deficit effect	0	−14	8	−11	10

Basis for Estimate

Section 6(a) of the bill gives the Department of State the authority to charge new application fees which will cover the cost of administering the new point system. These fees are expected to be classified as revenues. Other new revenues would come from the issuance of an additional 100,000 visas beginning in fiscal 1990.

Receipts from visa fees are currently deposited into the Treasury and thus are not specifically assigned to the State Department. In order to reimburse the State Department for added costs, Section 6(b) authorizes an annual transfer of up to $20 million of visa fees to a State Department account. This transfer is intended to cover

the State Department's cost of implementing the new point system and issuing the new visas, as well as costs for other visa and passport related functions. Under current law these fees are classified as revenues, but under the bill they would be classified as offsetting collections. The offsetting collections shown in the table are the result of the transfer of funds from the Treasury.

Though the bill specifies an effective date of October 1, 1989 for most provisions, the estimate assumes enactment of the legislation by October 1, 1988. Beginning in fiscal year 1990, the estimate also assumes an annual appropriation of $20 million from the transferred funds. Outlays are estimated using historical spendout rates.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Kent R. Christensen and Linda Radey.

10. Estimate approved by C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

X. Regulatory Impact Statement

In compliance with subsection (b) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the only significant regulatory impact that will result from the committee bill will come with the implementation of the new immigration "point system" established by section 3(a) of the bill, and revision of the labor certification process provided in section 3(c). Otherwise, the committee bill simply reforms existing regulation and procedures without adding to them.

XI. ADDITIONAL VIEWS OF MESSRS. SIMON AND DECONCINI

The committee bill makes a number of important and positive reforms to our Nation's legal immigration policy. In particular, there are three changes of significant benefit to the national interest.

First, the committee bill requires annual review of our immigration policies by the executive branch which shall submit its report to Congress. Every 3 years the President shall recommend revisions to the number of visas to be allocated based upon this review. Where the revisions involve more than a 5-percent change in visa allocations, affirmative congressional authority is required for the changes to take effect.

Second, the committee bill promises to greatly improve the intolerably long wait for second preference visas for spouses and children of permanent residents. The committee bill increases available visas under second preference from 70,200 under current law to 143,000. Progress on the second preference category will especially help permanent residents with a spouse or children in Mexico or the Philippines, from where the Department of State is now acting upon applications filed 10 years and 7 years ago respectively.

Third, the committee bill makes available for the first time a number of "independent" visas for prospective immigrants around the world who would like to enter the United States but have no family ties to this country. These visas will be allocated on a point system and by lottery random selection. This system has not been tried before in the United States and the Department of State has expressed some reservations about its implementation. (Testimony of Ogden, Subcommittee on Immigration and Refugee Affairs, October 23, 1987; December 11, 1987.) Accordingly, while the goal of the "independent" visas is laudable, it is important that careful monitoring of its implementation be undertaken so that it can effectively accomplish the important task it sets to undertake.

Each of the positive reforms contained in the committee bill can be accomplished without the changes the legislation makes in the fifth immigration preference. The drastic reduction in the number of visas available to brothers and sisters of U.S. citizens and the limitation on future eligibility to siblings who have never married are unnecessary to the overall bill and an unwise step away from the traditional importance placed upon family reunification as a cornerstone of our national immigration policy.

The changes made to the fifth preference run contrary to the long study and recommendations of the 1981 Select Commission on Immigration and Refugee Policy, considerable expert testimony before the subcommittee, and the observations contained in the subcommittee's own staff report, "Legal Immigration to the United States: A Demographic Analysis of Fifth Preference Visa Admissions." (S. Prt. 100–34, U.S. Senate Committee on the Judiciary, April 1987.)

Under current law, 64,800 visas are allocated annually to brothers and sisters of U.S. citizens. The committee bill reduces the number of available visas by 20 percent to 52,000 in the first 3 fiscal years of its implementation and by 67 percent to 22,000 thereafter. The committee bill adds a new requirement for eligibility. Siblings for whom U.S. citizens file fifth preference petitions must have never been married in order to qualify for this visa.

The reduction in visas makes an intolerable situation even worse. The committee report reflects that "[O]ne of the goals of the Committee bill is to address the issue of the escalating backlog in 5th preference visas for brothers and sister of U.S. citizens." The committee bill fails in this respect. Although the committee bill purports to devote 30,000 additional visas each year for 3 years to begin to deal with this backlog, in reality it does not create additional visas. Rather, the committee bill only takes away for the first 3 years 30,000 fewer visas than it takes away later.

By reducing the number of visas available, the committee bill increases the wait for eligible applicants. Commissioner Alan Nelson of the Immigration and Naturalization Service testified on an earlier version of the Committee bill:

> We note that the proposed legislation does not address the reduction or clearance of the backlog of existing immigrant visa registrants through special means as was proposed by the Select Commission at a rate of 100,000 additional visas annualy for 5 years. We believe that this is an issue worth addressing as a matter of fairness to persons who have waited, often for many years, to come legally . . . While we concur with the desirability of limiting the immigration of siblings, we must address the concern that persons now on the list for these visas may face even longer waits than they do now—possibly as long as half a century or more. (Testimony of Nelson, Subcommittee on Immigration and Refugee Affairs, December 11, 1987.)

While it is true that the committee-passed version of the committee bill was neither reviewed nor commented upon by the Commissioner, it suffers from the same defect of reducing the number of fifth preference visas.

Reducing the availability of fifth preference family reunification visas is detrimental to the national interest. Family reunification has been noted to promote the stability, health, and productivity of family members and ease the transition to American life for all concerned. Specifically, the Select Commission on Immigration and Refugee Policy recommended that the present policy admitting all brothers and sisters of adult U.S. citizens within the numerical limitations be continued. (Final Report and Recommendations, March 1, 1981, at 119.)

The subcommittee heard considerale testimony in favor of retaining the current eligibility and numbers for fifth preference. Gary Rubin of the American Jewish Committee observed:

> One of the glories of our immigration system is that it responds to family values. Elimination of preferences for married brothers and sisters would detract from this com-

> mitment. It would indeed be ironic if at a time when Congress is struggling to reintroduce family values into the Nation's social welfare system, it at the same time cut these same values from the immigration laws, which are built on family concepts. We don't need to do this. (Testimony of Rubin, Subcommittee on Immigration and Refugee Affairs, October 23, 1987.)

Similarly, the Organization of Chinese Americans submitted the following testimony:

> Obviously, reducing the 64,800 annual visas in the fifth preference category to 21,600 visas annually would only increase this already heavy backlog. Our best estimate is that the reduction proposed in the Committee bill would double the backlog in many countries, extending the 10-year backlog in China, Hong Kong, Korea, the Philippines, India, Mexico, and the Dominican Republic to 20 years. This would be directly contrary to the recommendations of the Select Commission, which urged just the reverse, that the backlogs in the immigration system be cleared up. Clearly, the principle of family reunification which the immigration system should always strive to uphold would take a severe beating if the bill is not modified. (Testimony of Organization of Chinese Americans, Subcommittee on Immigration and Refugee Affairs, October 23, 1987.)

These views were echoed by the Mexican American Legal Defense and Educational Fund, the American Immigration Lawyers Association, the Federation of Korean Associations, the National Federation of Asian Indian Associations in America, and other organizations.

The importance of fifth preference to family reunification has been made clear to the committee in previous Congresses. For example, the American Committee on Italian Migration testified in the 97th Congress:

> For Italians and for many other ethnic groups, brothers and sisters, whether or not they are married, are an integral part of the family reunion concept. Elimination of this preference category would violate a sacrosanct human right of an American citizen to live with his family according to his own traditional lifestyle. (Testimony of ACIM, Subcommittee on Immigration and Refugee Affairs, November 23, 1981.)

Once again, it is important to stress that the reforms that the committee bill makes in the independent visas, second preference visas and other areas do not depend on restricting the number and eligibility for fifth preference visas. The fifth preference changes are wholly unnecessary to the rest of the bill. Moreover, the changes to the fifth preference embodied in the committee bill brings negative consequences to U.S. citizens who petition for their siblings and for the prospective aliens themselves.

Limiting the number of visas available by a 20-percent reduction for the first 3 years and by a 67-percent reduction thereafter means that the same number of individuals waiting for fifth preference

visas will be seeking far fewer available visas. This change will make the current wait (e.g., of 12 years from Mexico; 11.5 years from Korea; 10.5 years from Hong Kong) even longer.

Compounding the numerical limitation is the eligibility restriction for fifth preference. The new requirement that brothers and sisters of U.S. citizens who apply for a fifth preference to have never been married (section 203(a)(4)), coupled with the longer waiting period, means that they will have to remain unmarried throughout the entire waiting period. Future applicants under fifth preference will be forced into the unacceptable choice of staying unmarried for two decades or more or foregoing their eventual reunification with a brother or sister in the United States.

The changes made by the committee bill will worsen an existing problem (long waiting lists) and address non-existent ones. While the committee report expresses concern about the escalating backlog of fifth preference visa applications, the staff report to the subcommittee on fifth preference visa applications concluded that "the rate of increase in such applications has decreased in recent years . . . roughly comparable to the rate of increase for total active visa demand." (Legal Immigration to the United States: A Demographic Analysis of Fifth Preference Admissions, Staff Report to the Subcommittee on Immigration and Refugee Policy, April 1987, p. 51.)

Similarly, while the committee report justifies the fifth preference limitations to avoid "chain migration", the staff report to the subcommittee as well as other sources conclude that "the rate of chain migration . . . is apparently substantially lower in fifth preference than previously supposed . . . Currently, the best estimate of chain migration suggests that it has been a relatively unimportant component of total legal immigration into the United States." (Id. at 52.)

The reduction in fifth preference visas will first disadvantage U.S. citizens who have petitioned for their siblings in the Philippines, Mexico, China, Hong Kong, Korea, India, and the Dominican Republic since they have the longest waiting list. It will also affect negatively those siblings who are in nations from which the United States has recently accepted large or increasing numbers of refugees or asyless, such as Cuba and Vietnam. (Id.) Finally, the reduction in fifth preference will hurt in the not too distant future those who are expected to benefit from the rest of S. 1611: holders of the new "independent" immigrant visas will be unable to use the fifth preference in a meaningful fashion if the number of available visas (already the most sought after in our immigration system) are reduced by 67 percent. When the immigrants who enter the United States under the committee bill become U.S. citizens 5 years from now, they too will be subjected to the longer fifth preference waiting list and be unable to petition for their siblings for reunification unless those siblings remain unmarried.

In conclusion, while the committee bill makes positive reforms in some areas of immigration law, it is equally clear that it unnecessarily and detrimentally reduces the fifth preference. As it continues along the legislative process, the committee bill should be amended and improved to restore fifth preference visa numbers and eligibility of married brothers and sisters of U.S. citizens.

XII. Changes in Existing Law

In compliance with paragraph (12) of rule XXVI of the Standing rules of the Senate, changes in existing law made by S. 2104 are as follows: Existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman.

Immigration and Nationality Act

As Amended through March 1, 1987

(Act of June 27, 1952; 66 Stat. 163; 8 U.S.C. 1101 et seq.)

WITH AMENDMENTS AND NOTES ON RELATED LAWS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act" [8 U.S.C. 1101, note].

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* * * * * * *

TITLE I—GENERAL

DEFINITIONS

Section 101. [8 U.S.C. 1101] (a) * * *
(b) As used in title I and II—

(1) The "child" means an unmarried person under twenty-one years of age who is—

* * * * * * *

(F) child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section [201(b),] *201(b)(2)(A)(i),* who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided,* That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further,* That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

[NUMERICAL LIMITATIONS

[SEC. 201. [8 U.S.C. 1151] (a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, and aliens who are admitted or granted asylum under section 207 or 208, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand: *Provided,* That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) of section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year.

[(b) The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citi-

zen of the United States: *Provided,* That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this Act.]

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b)(1), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family connection immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year;

(2) independent immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

(3) for fiscal years 1990, 1991, or 1992, qualified backlog immigrants as described in section 203(a)(4)(B), not to exceed 30,000 in any such fiscal year.

(b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—The following aliens are not subject to the worldwide levels or numerical limitations of subsection (a):

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).

(B) Aliens who are admitted under section 207(c) pursuant to a numerical limitation established under section 207(b).

(C) Aliens whose status is adjusted to permanent residence under section 210, 210A, or 245A.

(D) Aliens provided permanent resident status under section 249.

(2)(A)(i) Aliens who are immediate relatives. For purposes of this clause, the term "immediate relatives" means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent resident during a temporary visit abroad.

(C) Aliens who are admitted under section 207(c) pursuant to a numerical limitation established under section 207(a) and aliens who are granted asylum under section 208.

(c) WORLDWIDE LEVEL OF FAMILY CONNECTION IMMIGRANTS.—(1) The worldwide level of family connection immigrants under this subsection for a fiscal year is equal to—

(A) 440,000, plus

(B) the number computer under paragraph (2), plus

(C) the number (if any) computed under paragraph (3).

(2) The number computer under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraph (A) or (B) of subsection (b)(2) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1991) is the difference (if any) between the maximum number of visas which may be issued under subsection (a)(2) (relating to independent immigrants) during the previous fiscal year and the number of visas issued under that subsection during that year.

(d) WORLDWIDE LEVEL OF INDEPENDENT IMMIGRANTS.—(1) The worldwide level on independent immigrants under this subsection for a fiscal year is equal to—

(A) 150,000, minus

(B) for each of fiscal years 1990, 1991, and 1992, 30,000, plus

(C) the number computed under paragraph (2).

(2) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1991) is the difference (if any) between the maximum number of visas which may be issued under subsection (a)(1) (relating to family connection immigrants) during the previous fiscal year and the number of visas issued under that subsection during that year.

(e) REPORT ON, AND REVISION OF, WORLDWIDE LEVEL OF IMMIGRATION.—(1) In January before the beginning of fiscal year 1993 (and before each succeeding fiscal year thereafter), the Attorney General, in consultation with the Secretary of Labor, the Secretary of State, the Secretary of Health and Human Services, the Administrator of the Environmental Protection Administration, and the Secretary of Housing and Urban Development, shall prepare and transmit to the President and to the Judiciary Committees of the Senate and of the House of Representatives a report discussing the effect of immigration on the United States. The report shall consider—

(A) the requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members;

(B) the impact of immigration on labor needs, employment, and other economic and domestic conditions in the United States;

(C) the impact of immigration with respect to demographic and fertility rates and resources and environmental factors; and

(D) the impact of immigration on the foreign policy and national security interests of the United States.

The report for fiscal year 1993 (and each third fiscal year therafter) shall include a discussion, based upon such consideration, of the

need (if any) to revise the number specified in subsection (c)(1)(A) or the number specified in subsection (d)(1)(A) for the 3-fiscal year period beginning with the first fiscal year following transmittal of the report. Beginning with fiscal year 1993, and every three fiscal years therafter, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall hold hearings on the findings of the latest such report.

(2) In March before the beginning of fiscal year 1993 (and of each third fiscal year thereafter), the President shall, after considering the corresponding report transmitted under paragraph (1) and after soliciting the views of members of the Committees on the Judiciary of the House of Representatives and of the Senate, determine whether or not the number specified in subsection (c)(1)(A) or the number specified in subsection (d)(1)(A) should be changed for the 3-fiscal year period beginning with the next following fiscal year, and, if so, which number should apply instead of the number specified in the respective subsection for the fiscal years of that period. The President shall transmit such determination to the Congress by not later than March 31 before the fiscal year involved and shall deliver such determination to both Houses of Congress on the same day and while each House is in session.

(3)(A) Notwithstanding the provisions of subsections (c)(1)(A) and (d)(1)(A), if the number transmitted in a determination of the President with respect to subsection (c)(1)(A) or subsection (d)(1)(A) for the fiscal years of a 3-fiscal year period—

(i) is not less than 95 percent, nor more than 105 percent, of the number specified in that respective subsection, unless the Congress, by not later than August 31 following the date of the transmittal, enacts a joint resolution the substance of which disapproves the change with respect to the number for that respective subsection for the fiscal years of that 3-fiscal year period, the number so transmitted shall take effect and apply, instead of the number specified in that respective subsection, during that period; or

(ii) is less than 95 percent, or more than 105 percent, of the number specified in that respective subsection, if the Congress, by not later than August 31 following the date of the transmittal, enacts a joint resolution the substance of which approves the change with respect to the number specified in that respective subsection for the fiscal years of that 3-fiscal year period, the number so transmitted shall take effect and apply, instead of the number specified in that respective subsection, during that period.

(B) For purposes of this paragraph, a number transmitted by the President under paragraph (2) which takes effect and applies under this paragraph with respect to subsection (c)(1)(A) or (d)(1)(A) shall thereafter be deemed to be the number specified in that same subsection.

(4) Paragraphs (5), (6), and (7) are enacted—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each respective House, but applicable only with respect to the procedure to be followed in the case of joint resolutions described in paragraph (5), and supersede

the other rules only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change such rules at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(5) For purposes of this subsection, the term "joint resolution", with respect to a change in number transmitted by the President under paragraph (2) for a fiscal year or years, in the case described—

(A) in paragraph (3)(A), means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That Congress, pursuant to subsection (e)(3)(A) of section 201 of the Immigration and Nationality Act, disapproves the change proposed by the President in the number specified under subsection of that section for fiscal years (or years) transmitted to the Congress by the President on ", the blank spaces therein to be filled appropriately; or

(B) in paragraph (3)(B), means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That Congress, pursuant to subsection (e)(3)(B) of section 201 of the Immigration and Nationality Act, approves the change proposed by the President in the number specified under subsection of that section for fiscal year (or years) transmitted to the Congress by the President on ", the blank spaces therein to be filled appropriately.

(6)(A) No later than the first day of session following the day on which a determination is transmitted to the House of Representatives and to the Senate under paragraph (2), which determination provides for a change in a number specified in subsection (c)(1)(A) or (d)(1)(A) for a fiscal year, a joint resolution (as defined in paragraph (5)) with respect to each such change shall be introduced (by request) in each House by the chairman of the Committee on the Judiciary of that House, or by a Member or Members of the House designated by such chairman.

(B)(i) Each joint resolution introduced in a House shall be referred to the Committee on the Judiciary of the respective House. The committees shall make their recommendations to the respective House not later than June 15 following the date of introduction.

(ii) If the Committee has not reported such a joint resolution with respect to a change by such date, it is in order to move to discharge the Committee from further consideration of the joint resolution, except that no motion to discharge shall be in order after the Committee has reported a joint resolution with respect to the same change.

(iii) A motion to discharge under clause (ii) may be made only by a Member favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, in the Senate by the majority leader and the minority leader or their designees and in the House of Representatives by the chairman of the Committee on the Judiciary and the ranking minority member of such committee or their designees. An amendment to the motion

is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C)(i) When the Committee has reported, or been discharged from consideration of, a joint resolution, a motion to proceed to the consideration of the joint resolution shall be highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(ii) Debate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided in the Senate between, and controlled by, the majority leader and the minority leader or their designees and to be equally divided in the House of Representatives between individuals favoring and individuals opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which a joint resolution is passed or rejected shall not be in order.

(iii) Immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the joint resolution shall occur.

(iv) Appeals from the decisions of the chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(D) If, prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same change transmitted by the President in a number specified under a subsection for a fiscal year, then—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. [8 U.S.C. 1152] [(a) No person] *(a)(1) Except as specifically provided in paragraph (2) and in section 101(a)(27), 201(b)(2)(A)(i), and 203, no person* shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, [except as specifically provided in section 101(a)(27), section [201(b)] *201(b)(2)(A)(i),* and section 203. *Provided,* That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 203(a) shall not exceed 20,000 in any fiscal year. *And provided further,* That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who

may otherwise acquire the status of aliens lawfuly admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981,[25] exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.]

(2)(A) Subject to subparagraphs (B) and (C), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsection (c) of section 201 (relating to family connection immigrants) in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsection in that fiscal year.

(B) If for fiscal year 1990 or a succeeding fiscal year the number of aliens described in subparagraph (A) or (B) of section 201(b)(2) (relating to immediate relatives and similar individuals) who are natives of a particular foreign state or dependent area and who are issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the fiscal year exceeds the greater of—

(i) the numercial level computed under in subparagraph (A) for that state for that fiscal year, or

(ii) the level of such immigration of natives of that foreign state in fiscal year 1988 or fiscal year 1989 (whichever is greater),

then the numerical level applicable to that foreign state or dependent area in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess, except that such reduction shall not exceed one-half of the numerical level otherwise provided without regard to this subparagraph.

(C) If, because of the application of subparagraph (A) with respect to one or more foreign states, the number of visas available under section 201(c) for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, subparagraph (A) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(3)(A) Subject to subparagraph (B), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsection (d) of section 201 (relating to independent immigrants) in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsection in the fiscal year.

(B) If, because of the application of subparagraph (A) with respect to one or more foreign states or dependent areas, the number of visas available under section 201(d) for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, subparagraph (A) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(b) Each independent country, self-governing dominion, mandated territory and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of [the numerical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* when approved by the Secretary of State.[27] For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached [the numerical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompaying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached [the numerical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; [and] (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, [other than a special immigrant, as defined in section 101(a)(27), or an immediate relative of a United States citizen, as defined in section [201(b)] *201(b)(2)(A)(i), other than an alien described in section 201(b)(2)(A)(i)* shall be chargeable for the purpose of the limitation set forth in [section 202(a), to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any fiscal year.] *subsection (a)(1), to the foreign state.*

(d) In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change, issue appropriate instructions to all diplomatic and consular offices.

[(e) Whenever the maximum number of visas have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000,

in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

[(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas so allocated but not required for the classes specified in paragraphs (1) through (6) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.]

(e) Whenever the maximum number of visas have been made available under subsection (a) to natives of any single foreign state or to any dependent area, then in the next following fiscal year a number of visas, not to exceed the number specified in subsection (a)(2) for a foreign state or a dependent area, as the case may be, shall be made available and allocated for such state or such area for the same classes of aliens described in, and the same percentages specified in, paragraphs (1) through (4) of section 203(a).

[ALLOCATION OF IMMIGRANT VISAS

[SEC. 203. [8 U.S.C. 1153] (a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be alloted visas as follows:

[(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 201(a), to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or law-

fully resident alien unless (A) a valid home-study has been proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate publc or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

[(8) A spouse or child as defined in section 101(b)(1) (A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under paragraphs (1) through (7), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.

[(b) In considering applications for immigrant visas under subsection (a) consideration shall be given to applicants in the order in which the classes of which they are members are listed in subsection (a).

[(c) Immigrant visas issued pursuant to paragraphs (1) through (6) of subsection (a) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

[(d) Every immigrant shall be presumed to be a nonpreference immigrant until he establishes to the satisfaction of the consular officer and the immigration officer that he is entitled to a preference status under paragraphs (1) through (6) of subsection (a), or to a special immigrants status under section 101(a)(27), or that he is an immediate relative of a United States citizen as specified in section 201(b). In the case of any alien claiming in his application for an immigrant visa to be an immediate relative of a United States citizen as specified in section 201(b) or to be entitled to preference immigrant status under paragraphs (1) through (6) of subsection (a), the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

[(e) For the purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a), and to rely upon such estimates in authorizing the issuance of such visas. the Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.]

ALLOCATION OF IMMIGRANT VISAS

SEC. 203. (a) PREFERENCE ALLOCATION FOR FAMILY CONNECTION IMMIGRANTS.—Aliens subject to the world-wide level specified in section 201(c) for family connection immigrants shall be allotted visas as follows:

(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 15 percent of such worldwide level, plus any visas not required for the class specified in paragraph (4).

(2) SPOUSES AND UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are—

(A) the spouses of aliens lawfully admitted for permanent residence, or

(B) the unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence, if the sons or daughters—

(i) are under 26 years of age, or

(ii) as of the date of the enactment of the Immigration Act of 1988, had a petition filed on their behalf for preference status under section 203(a)(2) (as in effect on such date) by reason of such relationship and such petition was subsequently approved,

shall be allocated visas in a number not to exceed 65 percent of such worldwide level, plus any visas not required for the class specified in paragraph (1).

(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 10 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) NEVER MARRIED BROTHERS AND SISTERS OF CITIZENS AND PREVIOUS FIFTH PREFERENCE.—

(A) qualified immigrants who are the never married brothers or sisters of citizens of the United States, if such citizen are at least 21 years of age, and

(B) qualified immigrants who—

(i) as of the date of enactment of the Immigration Act of 1988 had a petition filed on their behalf for preference status by reason of the relationship described in paragraph (5) of section 203(a) of this Act as in effect on the day before such date and such petition was subsequently approved, and

(ii) continue of qualify under the terms of this act as in effect on the day before such date,

Shall be allocated visas in a number not to exceed 10 percent of such worldwide level, plus any visas not requried for the classes specified in paragraphs (1) through (3). For purposes of this paragraph, the term "never married", with respect to an individual, means an individual who has never been married or

whose marriage was annulled or othewise legally determined never to have had effect.

(b) PREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(d) for independent immigrants in a fiscal year shall be allocated visas as follows:

(1) SPECIAL IMMIGRANTS.—Visas shall be made available, in a number not to exceed 5 percent of such worldwide level, to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof).

(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—(A) Visas shall be made available next, in a number not to exceed 23 percent of such worldwide level to qualified immigrants who are members of the professions holding advanced degrees or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(C) In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) SKILLED WORKERS.—(A) Visas shall be made available next, in a number not to exceed 23 percent of such worldwide level, to the following two classes of aliens:

(i) Qualified immigrants who are capable, at the time of petitioning, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Qualified immigrants who hold bachelor's degrees and who are members of the professions.

(B) An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14).

(4) EMPLOYMENT CREATION.—Visas shall be made available next, in a number not to exceed 4 percent of such worldwide level or 5,000, whichever is greater, to any qualified immigrant who is seeking to enter the United States for the purpose of engaging in a new commercial enterprise which the alien has established and in which such alien has invested or, is actively in the process of investing, capital, in an amount not less than $2,000,000, and which will benefit the United States economy

and create fulltime employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence (other than the spouse, sons, or daughters of such immigrant). The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may prescribe regulations increasing the dollar amount of the investment necessary for the issuance of a visa under this paragraph.

(5) SELECTED IMMIGRANTS.—(A) Visas authorized in any fiscal year under section 201(d), less those required for issuance to the classes specified in paragraphs (1), (2), (3), and (4), shall be made available to qualified immigrants who attain a score of not less than 50 points, based on the point assessment system described in subparagraph (B).

(B) The point assessment system referred to in subparagraph (A) shall accord points based on criteria as follows:

(i) AGE (10 POINTS).—For an alien who (as of the first day of the fiscal year involved) is—

(I) not less than 21 years of age or more than 25 years of age, 10 points; or

(II) not less than 26 years of age or more than 44 years of age, 5 points.

(ii) EDUCATION (25 POINTS).—For an alien who (as of the first day of the first year involved)—

(I) has completed successfully grade school through high school or its educational equivalent (as determined by the Secretary of Education), 10 points;

(II) has been awarded a bachelor's degree or its equivalent (as determined by the Secretary of Education), 10 additional points; and

(III) has been awarded a graduate degree, an additional number of points (up to 5 additional points) to be determined by the Secretary of Education based on the level of the degree.

(iii) ENGLISH LANGUAGE ABILITY (20 POINTS).—For an alien who demonstrates (before September 1 before the fiscal year involved) an understanding of the English language and the ability to communicate in such language.

(iv) OCCUPATIONAL DEMAND (20 POINTS).—For an alien who is in an occupation for which the Secretary of Labor determines (before the fiscal year involved)—

(I) there will be increased demand in the United States for individuals in the occupation in the succeeding fiscal year, 10 points, and

(II) there is a present or there will be a future shortage of individuals in the United States to meet the need in the occupation in the United States in the succeeding fiscal year, 5 or 10 points.

(v) OCCUPATIONAL TRAINING AND WORK EXPERIENCE (20 POINTS).—To the extent the alien has training, work experience, or both, in the occupation described in clause (iv), 10 or 20 points, such points multiplied by the number of points awarded under clause (iv) divided by 10.

(C) The point assessment system described in subparagraph (B) shall be established by regulation by the Secretary of State

in consultation with the Attorney General, the Secretary of Labor, and the Secretary of Education.

(c) TREATMENT OF FAMILY MEMBERS.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b) (except for subsection (b)(5)) be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

(d) ORDER OF CONSIDERATION.—(1) Immigrant visas made available under subsection (a) or (b) (other than paragraph (5)) or under section 201(a)(3) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 101(a)(27)(D), with the Secretary of State) as provided in section 204(a).

(2) Of the immigrant visa numbers made available under subsection (b)(5) (relating to selected immigrants) in a fiscal year—

(A) 20 percent of such numbers shall be issued to eligible qualified immigrants who attain a score of at least 80 points on the assessment system described in subsection (b)(5)(B) with respect to petitions filed for the fiscal year involved, to be chosen in the random order described in clause (B); and

(B) 80 percent of such numbers shall be issued to eligible qualified immigrants with a qualifying score on such system strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(e) PRESUMPTION.—Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 101(a)(27), or section 201(b)(2)(A)(i), until the immigrant establishes to the satisfaction of the consular officer and the immigration officer that the immigrant is so described. In the case of any alien claiming in his application for an immigrant visa to be described in section 201(b)(1) or in subsection (a) or (b) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

(f) LISTS.—For purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a) and (b), and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of his availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond his control.

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. [8 U.S.C. 1154] [(a)(1) Any citizen of the United States claiming that an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 203(a), or to an immediate relative status under section 201(b), or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 203(a)(2), or any alien desiring to be classified as a preference immigrant under section 203(a)(3) (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 203(a)(6), may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney general may require. The petition shall be made under oath administered in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.] *(a)(1)(A) Any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.*

(B) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification. An alien may be classified as an alien described in paragraphs (2), (3), or (4) of section 203(a) with respect to a specific fiscal year on the basis of a petition filed in a previous fiscal year only if the alien has filed with the Attorney General a notice of continuing intent to be admitted to the United States as an immigrant under such section within the 2 fiscal years immediately previous to the specific fiscal year involved.

(C)(i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(1) (or any person on behalf of such an alien) (relating to special immigrants) may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(D) Any alien desiring to be classified under section 203(b)(2) (or any person on behalf of such an alien) (relating to professionals) may file a petition with the Attorney General for such classification.

(E) Any person desiring and intending to employ within the United States an alien entitled to classification under paragraph (2) or (3) of section 203(b) (relating to professionals and skilled workers) may file a petition with the Attorney General for such classification.

(F) Any alien desiring to be classified under section 203(b)(4) (relating to employment creation) may file a petition with the Attorney General for such classification.

(G)(i) Any alien desiring to be provided an immigrant visa under section 203(b)(5) (relating to selected immigrants) may file a petition at the place and time determined by the Secretary of State by regulation. While the place of filing may be designated inside the United States, the petitioner shall be physically outside the United States when submitting the petition. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State may designate a period for the filing of petitions with respect to visas which may be issued under section 203(b)(5) during either of the next two fiscal years beginning after the close of such period.

(II) Aliens who qualify, through random selection, for a visa under section 203(b)(5) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(2) A petition or registration under this subsection shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(3) The petition under this subsection shall include a self-administered oath by which the petitioner shall certify in writing at the time of filing a petition that all information contained within the petition is true and correct to the best of the petitioner's knowledge and that any willful misrepresentation of the facts or statements included in the petition shall be deemed a violation of section 212(a)(19).

(4) On or after October 1, 1989, an alien who—

(A) previous to being admitted as, or otherwise provided the status of, an alien lawfully admitted for permanent residence was married to an individual, and

(B) is so admitted, or provided such status, as a child or as the unmarried son or unmarried daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence, may not file a petition under this section on behalf of any alien to whom the alien was married previous to being so admitted or provided such status.

[*(2)***]** *(5)* (A) The Attorney General may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, had been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior mar-

riage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

* * * * * * *

(b) After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section [203(a) (3) or (6),] *section 203(b)(3),* the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in [section 201(b)] *section 201(b)(2)(A)(i)* or is eligible for [a preference status under section 203(a),] *preference under subsection (a) or (b) of section 203* approve the petition *(and, in the case described in section 203(b)(5), specify the point score on the assessment system)* and forward one copy thereof to the Department of State. [The Secretary of State] *Subject to section 203(b)(5), the Secretary of State* shall then authorize the consular officer concerned to grant the preference status.

* * * * * * *

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to enter the United States as a [preference immigrant under section 203(a)] *immigrant under subsection (a), (b), or (c) of section 203* or as an immediate relative under [section 201(b)] *Section 201(f)* if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

[(f) The provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).]

[(g)]*(f)*(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(4) *(as in effect before the date of the enactment of the Immigration Act of 1988),* as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

* * * * * * *

[(h)]*(g)* Notwithstanding subsection (a), a petition may not be approved to grant an alien immediate relative status or [preference status] *status under section 203(a)(2)* described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OR INADMISSIBILITY

SEC. 212. [8 U.S.C. 1182] (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive

visas and shall be excluded from admission into the United States:
(1) * * *

* * * * * * *

[(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified[39] to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(7);]

(14) Aliens seeking to enter the United States to perform skilled labor unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient qualified workers (or equally qualified workers in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the positions in which the aliens will be employed: and (B) the employment of aliens in such positions will not adversely affect the wages and working conditions of workers in the United States. The Secretary of Labor may, in his discretion, substitute for the determination and certification described by the preceding sentence a determination and certification that there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled labor. In making either determination under this paragraph, the Secretary of Labor may use labor market information without regard to the specific job opportunity for which certification is requested, but if such determination is adverse, the Secretary of Labor shall make a certification with regard to the specific job opportunity if the employer submits evidence that such specific certification would result in a differet determination. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens under this paragraph shall only apply to immigrants seeking admission under paragraph (2) or (3) of section 203(b);

* * * * * * *

(32) Aliens who are graduates of a medical school not accredited by a body or bodies approved for the purpose by the Commissioner of Education (regardless of whether such school of medicine is in the United States) and are coming to the United States principally to perform services as members of the medical profession, except

such aliens who have passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare) and who are competent in oral and written English. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section [203(a) (3) and (6) and to nonpreference immigrant aliens described in section 203(a)(7).] *203(b) (2), (3), and (5).* For the purposes of this paragraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on Junauary 9, 1978, and was practicing medicine in a State of that date:

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. [8 U.S.C. 1186a] (a) * * *

* * * * * * *

(g) DEFINITIONS.—In this section:

(1) The term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section [201(b)] *201(b)(2)(A)(i)*) as the spouse of a citizen of the United States.

* * * * * * *

VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

SEC. 217 [8 U.S.C. 1187] (a) * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

SEC. 218. (a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien entrepreneur (as defined in subsection (f)(1)), spouse, and child (as defined in subsection (f)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien entrepreneur, spouse, or child obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

(B) AT TIME OF REQUIRED PETITION.—In addition, the Attorney General shall attempt to provide notice to such an

entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsection (c)(1).

(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—

(1) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the establishment of the commercial enterprise was intended solely as a means of evading the immigration laws of the United States; or

(B)(i) a commercial enterprise was not established by the alien;

(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

(iii) the alien was not sustaining the actions described in clause (A) or (B) throughout the period of the alien's residence in the United States;

then the Attorney General shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien involved as of the date of the determination.

(2) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien entrepreneur, spouse, or child to be removed—

(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) in accordance with subsection (d)(3), the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) HEARING IN DEPORTATION PROCEEDING.—In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

(A) IN GENERAL.—If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien entrepreneur appears at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90-days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, spouse, or child as of the date of the determination.

(D) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying commercial enterprise.

(d) DETAILS OF PETITION AND INTERVIEW.—

(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that—

(A) a commercial enterprise was established by the alien;

(B) the alien invested or was actively in the process of investing the requisite capital; and

(C) the alien sustained the actions described in clauses (A) and (B) throughtout the period of the alien's residence in the United States.

(2) PERIOD FOR FILING PETITION.—

(A) 90 DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) FILING OF PETITIONS DURING DEPORTATION.—In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such case as may be appropriate.

(e) TREATMENT OF PERIOD FOR PURPOSE OF NATURALIZATION.—For purposes of title III, in the cae of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) DEFINITIONS.—In this section:

(1) The term "alien entrepreneur" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 203(b)(4).

(2) The term "spouse" and the term "child" mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, or an alien entrepreneur.

* * * * * * *

APPLICATIONS FOR VISAS

SEC. 222. [8 U.S.C. 1202] (a) Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the immigrant shall state his

full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; present address and places of previous residence; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living, then the name and address of his next of kin in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, the name and complete address of such relative or friend; the purpose for which he is going to the United States; whether or not he [63] intends to remain in the United States permanently; whether he was ever arrested, convicted or was ever in prison or almshouse; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been treated in an institution or hospital or other place for insanity or other mental disease; if he claims to be an immediate relative within the meaning of section [201(b)] *201(b)(2)(A)(i)* or a preference or special immigrant, the facts on which he bases such claim; whether or not he is a member of any class of individuals excluded from admission into the United States, or whether he claims to be exempt from exclusion under the immigration laws; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

* * * * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. [8 U.S.C. 1251] (a) * * *

* * * * * * *

(9)(A) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status, (B) or is an alien with permanent resident status on a conditional basis under section 216 and has such status terminated under such section [;] , *or (C) is an alien with permanent resident status on a conditional basis under section 218 and has such status terminated under such section.*

* * * * * * *

SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE

SEC. 244. [8 U.S.C. 1254] (a) * * *

* * * * * * *

(d) Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancel-

lation of deportation of such alien is made, and unless the alien is an immediate relative within the meaning of section [201(b)] *201(b)(2)(A)(i)* the Secretary of State shall reduce by one the number of immigrant visas authorized to be issued under section [201(a) or 202(a)] *201(c) or 202(a)(2)(A)* for the fiscal year then current.

* * * * * * *

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. [U.S.C. 1255] (a) * * *

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections 202(e) or [203] (a) *203* within the class to which the alien is chargeable for the fiscal year then current.

(c) Subsection (a) shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section [201(b)] *201(b)(2)(A)(i)* or a special immigrant described in section 101(a)(27)(H)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is not in legal immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own for technical reasons) to maintain continuously a legal status since entry into the United States, or (3) any alien admitted in transit without visa under section 212(d)(4)(C); or [(5)] *(4)* an alien (other than an immediate relative as defined in section [201(b)] *201(b)(2)(A)(i)* who was admitted an a nonimmigrant visitor without a visa under section 212(l) or section 217[.] *, or (5) an alien who is applying for adjustment of status to preference status under section 203(b)(5).*

* * * * * * *

(f) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 218.

* * * * * * *

ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; MISREPRESENTATION AND CONCEALMENT OF FACTS

SEC. 275. [8 U.S.C. 1325](a) * * *

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(c) Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

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INTERNAL REVENUE CODE OF 1986

(PUBLIC LAW 99-514)

* * * * * * *

Section 3304(a) * * *

* * * * * * *

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 212(d)(5) of the Immigration and Nationality Act),

* * * * * * *

SOCIAL SECURITY ACT

* * * * * * *

Section 1614 (42 U.S.C. 1382)

(a)(1) For purposes of this subchapter, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 1182(d)(5) of Title 8).

* * * * * * *

VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT ACT OF 1982

(Public Law 97-271)

* * * * * * *

"ADJUSTMENT OF IMMIGRATION STATUS

"SEC. 2. (a) the status of any alien described in subsection (b) may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien—

* * * * * * *

"(c) * * *

* * * * * * *

"(4) For purposes of this subsection, the terms 'second preference petition', 'fourth preference petition', 'fifth preference petition', and 'immediate relative petition' mean, in the case of an alien, a petition filed under section 204(a) of the Act [section 1154(a) of this title] to grant preference status to the alien by reason of the relationship described in section 203(a)(2), 203(a)(4), 203(a)(5), or 201(b), respectively, of the Act [section 1153(a)(2), 1153(a)(4), 1153(a)(5), or 1151(b) of this title] *(as in effect before October 1, 1989) or by reason of the relationship described in section 203(a)(2)(B), 203(a)(3), or 201(b)(2)(A)(i), respectively, of such Act (as in effect on or after such date).*

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Calendar No. 570

100TH CONGRESS
2d Session

SENATE

REPORT
100-293

RETIREMENT AND SURVIVOR ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES ACT OF 1987

FEBRUARY 29 (legislative day, FEBRUARY 15), 1988.—Ordered to be printed

Mr. BYRD (for Mr. BIDEN) from the Committee on Judiciary, submitted the following

REPORT

[To accompany S. 1630]

The Committee on the Judiciary, to which was referred the bill (S. 1630) to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, having considered the same, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE OF THE BILL

The purpose of the bill is to provide bankruptcy judges and magistrates with an adequate pension upon retirement from service on the bench. Under the existing retirement system, an adequate pension can only be earned after a full and long career in government

S.523-4

service. Most bankruptcy judges and magistrates are appointed mid-career, primarily because the requirements of the judicial office call for experienced attorneys. They are unable, consequently, to accumulate the necessary number of years of service to earn an adequate pension.

The judiciary is encountering growing difficulties in recruiting and retaining the well-qualified attorneys necessary to fill these important offices. The lack of reasonable financial security upon reaching retirement age often is the cause. This bill provides the judiciary with the means to maintain the professional caliber of these offices. The retirement benefits provided under the proposed legislation are necessary and similar in kind to those already provided to virtually all other federal judicial officers.

II. Discussion

Bankruptcy judges and magistrates play a vital role in the federal judiciary. Although the duties performed by these judicial officers are distinct, the nature of their work is similar. Both of these officers serve as adjuncts to the district courts and exercise the jurisdiction of the district court itself. Bankruptcy judges and magistrates are appointed by the federal courts for fixed terms of fourteen and eight years, respectively. Candidates for each office are appointed only after undergoing a rigorous selection process. The Judicial Conference of the United States has consistently endorsed a policy of parity in the treatment accorded to these officers and strongly endorses the proposed legislation.

The role and responsibilities of both these judicial offices have steadily expanded, particularly as a result of recent statutory changes. Bankruptcy judges handle virtually all bankruptcy litigation in the first instance. With the exception of trying felony cases, magistrates are authorized upon delegation from the Article III judges to handle most matters filed in the district court, including the trial of civil cases with the consent of the parties. Without highly-competent bankruptcy judges and magistrates to perform these duties, the number of Article III judges would need to be expanded dramatically. The services provided by these judicial officers is one of the primary reasons that the federal district courts have been able to cope with rising caseloads.

The workload handled by these judicial officers is diverse, heavy and growing. Since the passage of the Bankruptcy Reform Act of 1978, the number of bankruptcy petitions filed each year has increased from 226,471 in 1979 to 561,278 in 1987. The Administrative Office of the United States Courts projects further filing increases to 775,000 petitions by 1989. The caseload of bankruptcy judges includes many routine consumer cases which require minimal judicial involvement. Yet, a significant 16 percent of the total filings consist of business cases, both reorganizations and liquidations. During the 1987 reporting year, there were more than 22,500 chapter 11 business reorganization cases filed. As a result of the enactment of bankruptcy relief provisions for family farmers in 1986, more than 5,000 petitions have been filed under the new chapter 12 created by that legislation. The impact of the decisions

of bankruptcy judges on the national economy is substantial and felt on a daily basis.

During the fiscal year that ended June 30, 1987, magistrates handled approximately 466,000 proceedings. In particular, magistrates conducted over 134,000 preliminary proceedings in felony cases; handled more than 197,000 references of civil and criminal pretrial matters; reviewed more than 6,500 social security appeals and more than 27,000 prisoner filings; and tried more than 95,000 misdemeanors and 4,900 civil cases on consent of the parties. A substantial portion of the work of magistrates is performed in cases assigned to Article III judges. Absent the assistance provided by magistrates, the number of judgeships clearly would have to be increased.

A. CURRENT RETIREMENT COVERAGE

All bankruptcy judges and magistrates are subject to social security coverage. With some modifications, these judicial officers are also covered by the retirement systems which apply to federal employees generally.

There are two principal government pension plans: (1) Civil Service Retirement System (CSRS) and (2) Federal Employees Retirement System (FERS). Most bankruptcy judges and magistrates who have been in office continuously since December 31, 1983, participate in CSRS or a variant of the plan which offsets the social security benefits earned while in office against the CSRS annuity. Under CSRS, a judicial officer is entitled to an annuity based on 2½ percent of his final average salary multiplied by the number of years of judicial service (and up to five years of military service.) A bankruptcy judge or a magistrate is entitled to an unreduced annuity at age 55 years with 30 years of creditable service or at age 60 years with 10 years of judicial service. The judicial officer contributes 8 percent of his salary to CSRS for full benefits, or approximately 2 percent of the total salary for reduced benefits, in addition to social security taxes.

Bankruptcy judges and magistrates appointed after December 31, 1983, who have less than a total of 5 years of government civilian service, are covered mandatorily under FERS. These judicial officers are entitled to 1 percent of their final average salary for each year of creditable service, to social security benefits and to returns from voluntary contributions to the Thrift Savings Plan. These judicial officers contribute about 1 percent of their total salary for the annuity benefit, in addition to the social security taxes.

The inadequacy of the existing retirement systems adversely affects the recruitment and retention of well-qualified attorneys for these judicial offices. Retirement benefits under the government pension plans are geared to career federal employees who serve for thirty or more years. Recruitment of attorneys who are at the peak of their legal experiences and earnings is particularly difficult because their age often prevents accrual of the appropriate number of years necessary to obtain any significant retirement benefits. The judiciary is finding it increasingly difficult to attract well-qualified attorneys who are willing to forego the opportunities of

the private sector for the relative economic hardships associated with these judicial offices.

Retaining well-qualified individuals in these judicial offices is also becoming more difficult, with the most talented bankruptcy judges and magistrates attracting intense attention from the marketplace. Since the Bankruptcy Reform Act became effective nine years ago, 140 bankruptcy judges of the 232 authorized judgeship positions, have left the bench. (The number of authorized positions was recently increased to 284.) Of this number, 88 retired. Many of them left office shortly after attaining the minimum retirement eligibility age of 55 years (or 60 years with 10 years of judicial service), or as early as 50 years of age with a reduced annuity. Fifty-two bankruptcy judges resigned before reaching the minimun retirement eligibility age. Since the 1979 amendments to the Federal Magistrates Act, nearly 60 full-time magistrates have left office prior to attaining retirement eligibility. This turnover rate is damaging not only to the courts involved, but also to the institution itself.

B. EXPLANATION OF BENEFITS

The retirement benefits under the proposed legislation are fair and necessary. Under the bill, a bankruptcy judge or a magistrate is entitled at age 65 years and after the completion of 14 years of judicial service to an annuity equal to the salary of the position at the time he or she left the position. This benefit is similar to that provided to other federal judicial officers, including article III judges, territorial judges and tax court judges.

Judicial service performed since October 1979, is eligible for credit under the provisions of the legislation. Service of less than 14 years in office, but equal to or greater than 8 years, is eligible for a pro-rated annuity benefit. Annuity rights vest after the completion of 8 years of service, while the right to disability benefits vests after 5 years of service. No contribution by the judicial officer to this plan is required. They will still be subject, however, to social security taxes. A bankruptcy judge or magistrate may also elect to participate in the Judicial Survivor's Annuity System at a cost of 5 percent of salary. Currently, survivors' benefits are included in the CSRS and FERS systems.

Special provisions govern incumbent bankruptcy judges and magistrates. Under the bill, an incumbent judicial officer is also entitled to credit under the general government pension plans (CSRS or FERS) for service which is not credited under the proposed legislation and to a refund of contributions for service which is entitled to enhanced credit under the bill. In addition, there is no minimum service period for incumbents to establish eligibility for the enhanced retirement benefit purposes.

The retirement plan under the proposed legislation contains incentives for the judicial officers to remain in office. No enhanced retirement benefit is payable until the bankruptcy judge or magistrate is at least 65 years of age, and the maximum benefit is realized only when the officer remains in office until age 65 years and completes 14 years of service. A bankruptcy judge or magistrate who separates from office prior to reaching age 65 years after com-

pleting 14 years of service could suffer a considerable loss, since the annuity payable at age 65 years would be based on the salary of the position at the time he or she left office. Depending upon the length of intervening time and the salary adjustments to the position, the final annuity could be significantly less than the annuity that would have been earned had the judicial officer remained in service until age 65 years.

Bankruptcy judges and magistrates are asked to serve for lengthy terms of office, often during their most productive years. These are also the same years during which many attorneys in law firms are achieving senior partner status, an opportunity many of these judicial officers forfeit by assuming the office. Upgrading the retirement benefits of these judicial officers should go far in attracting and retaining the quality individuals the respective offices demand.

III. Legislative History

Senator Howell Heflin, the Chairman of the Subcommittee on Courts and Administrative Practice, introduced Senate bill 1630 on August 7, 1987, on behalf of himself and Senator Grassley, the Ranking member of the subcommittee and Senator DeConcini. Other cosponsors to the legislation include Senators Thurmond, Kassebaum, Cochran, Chiles, Johnston, Hatch, Cohen, Durenberger, Inouye, Lugar, Matsunaga, Pryor and Bumpers.

The Subcommittee on Courts and Administrative Practice held a hearing on October 28, 1987. The subcommittee heard from a number of witnesses including: the Honorable Otto Skopil, chairman of the Committee on the Administration of the Federal Magistrates System of the Judicial Conference of the United States; the Honorable Morey Sear, chairman of the Committee on the Administration of the Bankruptcy System of the Judicial Conference; the Honorable Robert Merhige, chairman of the Subcommittee on Bankruptcy Administration of the Judicial Conference; the Honorable Ralph Kelley, the chief bankruptcy judge for the eastern district of Tennessee; the Honorable Harvey Schlesinger, President of the National Council of United States District Magistrates; and the Honorable John Dilenschneider, chairman of the Association of Former Bankruptcy Judges.

The Subcommittee on Courts and Administrative Practice held a mark-up of S. 1630 on November 18, 1987, and reported the bill to the full Judiciary Committee favorably without amendment. The Judiciary Committee considered the bill on December 3rd and ordered the bill to be reported to the full Senate without amendment.

IV. Text of Bill

[S. 1630, 100th Cong., 2d Sess.]

A BILL To provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1987".

BASIC RETIREMENT PROGRAM

SEC. 2. (a) Chapter 17 of title 28, United States Code, is amending by adding at the end the following new section:

"§ 377. Retirement of bankruptcy judges and magistrates

"(a) A bankruptcy judge or magistrate to whom this section applies who retires after serving at least 14 years, whether continously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate left office.

"(b) A bankruptcy judge or magistrate to whom this section applies who retires after serving less than 14 years but at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, and annuity equal to that proportion of the salary being received at the time the judge or magistrate left office which the aggregate number of years of service bears to 14.

"(c) A bankruptcy judge or magistrate to whom this section applies who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (e), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which aggregate number of years of service, not to exceed 14 years, bears to 14.

"(d) A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

"(e) A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5.

"(f)(1) For purposes of calculating an annuity under this section—

"(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

"(B) each month of service shall be credited as one-twelfth of a year.

"(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a United States magistrate to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

"(B) In the case of an individual who is a magistrate to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a bankruptcy judge to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

"(g) This section applies to—

"(1) any bankruptcy judge appointed under—

"(A) section 152 of this title;

"(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2682); or

"(C) section 404 of the Act of November 6, 1978 (Public Law 95–598, 92 Stat. 2549); and

"(2) any United States magistrate appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.".

(b) The table of sections at the beginning of chapter 17 of title 28, United States Code, is amended by adding at the end the following new item:

"377. Retirement of bankruptcy judges and magistrates.".

(c)(1) A bankruptcy judge or United States magistrate in active service on the effective date of this Act shall, subject to paragraph (2), be entitled to, in lieu of the annuity otherwise provided under the amendments made by this section—

(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

(B) an annuity calculated under subsections (b) and (f) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate on or after October 1, 1979 (as specified in the election pursuant to paragraph (2)), without regard to the minimum number of years of service as such a bankruptcy judge or magistrate, except that—

(i) in the case of a judge or magistrate who retires with less than 8 years of service, the annuity under subsection (b) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate leaves office which the years of service bears to 14, and

(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed

the rate of pay for the bankruptcy judge or magistrate in effect on the day before the retirement becomes effective.

(2) A bankruptcy judge or magistrate shall be entitled to an annuity under this subsection only if the judge or magistrate files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

(3) A bankruptcy judge or magistrate who makes an election under paragraph (2) shall be entitled to a credit under section 8342 or section 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate under the applicable provisions of title 5, United States Code.

(4) With respect to any bankruptcy judge or magistrate receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

(A) the amount of compensation which such recalled judge or magistrate receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this section; and

(B) such recalled judge or magistrate may serve as a reemployed annuitant to the extent permitted in subsection (e) of section 375 of such title.

JUDICIAL SURVIVORS' ANNUITIES

SEC. 3. (a) Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (a)(1) is amended by—

(A) striking "or" at the end of subparagraph (D);

(B) adding "or" after the semicolon at the end of subparagraph (E); and

(C) inserting after subparagraph (E) the following:

"(F) a full-time bankruptcy judge or a full-time United States magistrate;"; and

(D) inserting after the semicolon at the end of clause (iii) the following: ", or who, in the case of a full-time bankruptcy judge or United States magistrate, notifies the Director in writing of his or her intention to come within the purview of this section on or before the date of an election to retire under section 377 of this title;".

(2) Subsection (a)(1) is amended by—

(A) striking out "and" at the end of subparagraph (D);

(B) inserting "and" after the semicolon at the end of subparagraph (E); and

(C) adding at the end the following:

"(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title,".

(b) In the case of a bankruptcy judge or magistrate who elects an annuity under section 2(c), only service for which an annuity under subsections (b) and (f) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 38, United States Code, as amended by subsection (a) of this section.

AMENDMENTS RELATED TO RECALL

SEC. 4. (a) Section 155(b) of title 28, United States Code, is amended—

(1) by inserting "section 377 of this title or in" after "annuity in"; and

(2) by inserting "which are applicable to such judge" after "title 5".

(b) Section 375 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "under the provisions of section 377 or this title or" after "was retired";

(2) in subsection (c) by inserting "under the provisions of section 377 of this title or" after "annuity provided"; and

(3) in subsection (g) by inserting "who retired under the applicable provisions of title 5" after "section".

(c) Section 636(h) of title 28, United States Code, is amended in the second sentence—

(1) by inserting "section 377 of this title or in" after "annuity set forth in"; and

(2) by inserting "which are applicable to such magistrate" after "title 5".

TECHNICAL AMENDMENTS

SEC. 5. Section 631(e) of title 28, United States Code, is amended—

(1) by striking out "(j)" and inserting in lieu thereof "(k)";

(2) by striking out "(i)" and inserting in lieu thereof "(j)"; and

(3) by striking out "(h)" and inserting in lieu thereof "(i)".

CONFORMING AMENDMENTS

SEC. 6. (a) Section 8334(i) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) Notwithstanding any other provision of law, a judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magistrates Act of 1987 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump sum credit under section 8342(a) of this title.".

(b) Section 8402(c) of the United States Code, is amended by adding at the end the following new paragraph:

"(5) A judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magis-

trates Act of 1987 shall be excluded from the operation of this chapter if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a credit under section 8424 of this title.".

EFFECTIVE DATE

SEC. 7. This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to bankruptcy judges and magistrates who retire on or after the date of the enactment of this Act.

V. SECTION-BY-SECTION ANALYSIS

Section 1. The short title: "Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1987".

Section 2. Adds a new section to Chapter 17 of Title 28, of the United States Code, which provides benefits for bankruptcy judges and magistrates similar to the benefits provided territorial judges under Section 373 of Title 28 U.S.C.

District judges appointed for the territories, unlike Article III judges, serve for fixed terms of years rather than during good behavior. Section 373 of Title 28, United States Code, now provides a special retirement system for these four judges. A territorial judge becomes eligible for a retirement annuity equal to the salary of the office at age 70 after serving for 10 years or at age 65 after serving for 15 years. The annuity may be increased by periodic cost-of-living adjustments, not to exceed 95 percent of a United States district judge's salary. An annuity is also provided in the case of a disability.

Section 2(a) of the bill authorizes an annuity for bankruptcy judges and magistrates after 14 years of service equal to the salary of the office at the time the magistrate of bankruptcy judge leaves office, but the annuity is not payable until the age of 65.

Subsection (b) authorizes a proportionate annuity after 8 years of service.

Subsection (c) authorizes an annuity of 40 percent of salary in the case of a disability after 5 years of service or a proportionate annuity in the case of a disability after 10 years of service.

A proportionate annuity under subsection (b) or (c) is calculated by dividing the judicial officer's years of service by 14 and multiplying the result by the salary of the office.

Subsection (d) would authorize cost-of-living adjustments in annuities to the extent that the adjusted annuity would not exceed the salary then payable to the position from which the judge or magistrate retired.

Subsection (e) prohibits a judicial officer who elects to retire under the system provided for in S. 1630, from also receiving an annuity from the Civil Service Retirement System or the Federal Employees Retirement System.

Subsection (f) provides that all service as a full-time judicial officer is to be credited and that each month of service shall be counted as one-twelfth of a year in calculating an annuity.

Subsection (g) applies coverage of the benefit system provided in S. 1630 to all bankruptcy judges and full-time magistrates but only to service on or after October 1, 1979.

Section 2(b) of the bill makes a conforming amendment to the sectional analysis of Chapter 17 of Title 28 United States Code.

Section 2(c) provides transitional rules for incumbent bankruptcy judges or magistrates. Many incumbent bankruptcy judges with service prior to October 1, 1979, are now covered under the Civil Service Retirement System (CSRS). This provision allows incumbent bankruptcy juidges and magistrates to also credit any service since October 1, 1979, towards the annuity system provided in S. 1630, without regard to a minimum number of years of service. October 1, 1979, is the date the bankruptcy judges' powers were enhanced under the 1978 Bankruptcy Amendments (Public Law 95–598) and the approximate date that magistrates' powers were enhanced under the Federal Magistrate Act of 1979 (Public Law 96–82). This section in effect establishes a hybrid retirement system for incumbent bankruptcy judges and magistrates. This section allows these judicial officers to choose a date after which their service will no longer be credited to a civil service retirement annuity. These annuities, as increased by the additional payment authorized by this section may not exceed the salary then payable for the position from which the bankruptcy judge or magistrate retired.

Section (c)(2) provides that for a bankruptcy judge or magistrate to be entitled to an annuity under the provisions of Section 377, he or she must file a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service is to be credited.

Section (c)(3) allows a bankruptcy judge or magistrate who elects to receive an annuity under Section 377, to credit any service after October 1, 1979, for which contributions were made toward the 14 year requirement of 377.

Section (c)(4) provides that compensation for bankruptcy judges and magistrates who are recalled under section 375 of title 28 of the United States Code is to be calculated on the basis of the annuity provided for under section 377. Currently section 375(c) allows a recalled bankruptcy judge or magistrate not only to receive the annuity, but an amount equal to the difference between that annuity and the current salary of the office to which the judge or magistrate is recalled.

Section 3. Amends Section 376 of title 28 of the United States Code, to authorize bankruptcy judges and magistrates who elect to receive annuities under section 377 of title 28, to enroll in the Judicial Survivors Annuity System.

Section 4. Amends the general provisions allowing retired bankruptcy judges and magistrates to be recalled to serve by including appropriate cross references to section 377 of title 28 United States Code.

Section 5. Amends section 631(e) of title 28 United States Code which concerns the appointment and tenure of United States mag-

istrates. These amendments are not directly related to this bill, but correct a long-standing typographical error in cross-references.

Section 6. Makes conforming amendments to the retirement provisions of title 5, United States Code.

Section 7. States that this Act shall take effect upon enactment and apply to bankruptcy judges and magistrates who retire on or after that date.

VI. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 25, 1988.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1630, the Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1987, as ordered reported by the Senate Committee on the Judiciary on December 3, 1987.

If you wish further details on this estimate, please call me or have your staff contact Carmela Dyer.

Sincerely,

James L. Blum, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill No.: S. 1630.

2. Bill title: Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1987.

3. Bill status: As ordered reported by the Committee on the Judiciary on December 3, 1987.

4. Bill purpose: To provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1988	1989	1990	1991	1992	1993
Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates:						
Budget authority	3	4	4	5	6	7
Estimated outlays	3	4	4	5	6	7
Civil Service Retirement Trust Fund:						
Fewer CSR Annuitants:						
Budget authority	0	0	0	(1)	(1)	1
Estimated outlays	−2	−2	−2	−2	−3	−3
Refund payments:						
Budget authority	0	0	0	(1)	(1)	−2
Estimated outlays	2	3	3	4	5	7
Net Effect on Civil Service Trust Fund:						
Budget authority	0	0	0	0	0	−1
Estimated outlays	0	1	1	2	2	4
Judicial Survivors' Annuities Fund:						
Budget authority	1	1	1	1	1	2

	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Estimated outlays	0	0	0	0	0	0
Bill total:						
Budget authority	6	5	5	6	7	8
Estimated outlays	1	5	5	7	8	11

[1] Less than $500,000.

Note.—The costs of this bill would fall within budget functions 600 and 750.

Basis of estimate

This bill would create a new retirement system for bankruptcy judges and magistrates, offering them an alternative to the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). The new system would provide bankruptcy judges and magistrates with a retirement benefit equal to their final salary. Benefits would be fully indexed but could not exceed the salary paid to an active judge. Those eligible may elect to join the new system at any time. Benefits would be fully paid for by the government requiring no contributions by employees. The minimum retirement age would be raised to 65, however, from the current minimum of age 60. A reduced pension would be paid at age 65 with a minimum of 8 years of service and a full pension paid after 14 years of service.

This new entitlement program would be funded by federal appropriations. Based on information provided by the Administrative Office of U.S. Courts, annual appropriations of less than $4 million could be required in fiscal year 1988 and about $7 million by fiscal year 1993. Amounts are subject to subsequent appropriations action. These estimates assume all judges work 14 years in order to receive a full pension. If some judges choose to retire early after 8 years with a reduced pension, costs could be slightly higher. The estimates also assume that all judges choose to join the new system. Costs could be slightly lower to the extent that some choose to remain in the Civil Service Retirement System.

Savings of $2 million to $3 million would accure each year through 1993 to the Civil Service Retirement Trust Fund since those choosing the judicial retirement system would not receive Civil Service benefits. Judges and magistrates choosing the new system, however, would be entitled to a refund of their contributions toward CSRS or FERS benefits. Refund payments from the Civil Service Retirement Trust Fund are estimated to be about $3 million in fiscal year 1988 increasing to about $7 million by fiscal year 1993. The net effect of this legislation on the Civil Service Trust Fund would be to increase costs by about $4 million by fiscal year 1993. It seems likely that judges would continue to participate in CSRS or FERS and the Thrift Savings Plan up to the time of retirement, opting into the new system at the last moment so the estimate incorporates no significant change in employee or government contributions to the Thrift Savings Plan or in employee contributions to CSRS or FERS.

The bill would also allow judges and magistrates choosing the new system to participate in the Judicial Survivors' Annuities Fund. This Fund provides benefits to the survivors of judicial offi-

riods. Employees choosing to participate contribute 2 percent of their salary to the Fund and the government pays an estimated additional 9 percent of their salary. This legislation would result in additional employee and government payments into the Judicial Survivors' Annuities Fund of about $1 million each year. No significant payments to survivors of those newly participating judges and magistrates are expected over the six-year period. The additional government payment is intrabudgetary and has no effect on total federal spending.

4. Estimated cost to State and local governments: None.
5. Estimate comparison: None.
6. Previous CBO Estimate: None.
7. Estimate Prepared by: Carmella Dyer.
8. Estimate approved by: G.G. Nadeau for James L. Blum, Assistant Director for Budget Analysis.

VII. Regulatory Impact Statement

Pursuant to paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the Committee after due consideration, concludes that the Act will not have direct regulatory impact.

VIII. Changes in Existing Law

UNITED STATES CODE

TITLE 28

* * * * * * *

CHAPTER 6—BANKRUPTCY JUDGES

* * * * * * *

§ 155. Temporary transfer of bankruptcy judges

(a) * * *

(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the limitations on the payment of an annuity in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such judge.

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CHAPTER 15—RESOLUTION AND DISPOSITION OF JUDICIAL AND JUDICIAL-RELATED DISPUTES

Sec.
371. Retirement on salary; retirement in senior status.
372. Retirement for disability; substitute judge in failure to retire; judicial disability.
373. Judges in Territories and Possessions.
374. Residence of retired judges; official station.
375. Recall of certain judges and magistrates.

376. Annuities to widows and surviving dependent children of justices and judges of the United States.
377. Retirement of bankruptcy judges and magistrates.

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§ 375. Recall of certain judges and magistrates

(a)(1) A bankruptcy judge, a judge of the Claims Court, or a United States magistrate appointed under chapter 43 of this title, who was retired *under the provisions of section 377 of this title or* under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title, may agree to be recalled to serve under this section for a period of five years as a bankruptcy judge, judge of the Claims Court, or magistrate, as the case may be, upon certification that substantial service is expected to be performed by such retired judge or magistrate during such 5-year period. With the agreement of the judge or magistrate involved, a certification under this subsection may be renewed for successive 5-year periods.

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(c) During the 5-year period in which a certification under subsection (a) is in effect, the judge or magistrate involved shall receive, in addition to the annuity provided *under the provisions of section 377 of this title or* under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which the judge or magistrate is recalled.

* * * * * * *

(g) Except as provided in subsection (c), a judge or magistrate recalled under this section *who retired under the applicable provisions of title 5* shall be considered to be a reemployed annuitant under chapter 83 or chapter 84, as the case may be, of title 5.

(h) The Judicial Conference of the United States may promulgate regulations to implement this section.

§ 376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

(1) "judicial official" means:

(A) a Justice or judge of the United States, as defined by section 451 of this title;

(B) a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands;

(C) a Director of the Administrative Officer of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

(D) A Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (b) of section 627 of this title; [or]

(E) an administrative assistant to the Chief Justice of the United States, after he or she has filed a waiver in ac-

cordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title; *or*

(F) a full-time bankruptcy judge or a full-time United States magistrate;

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, (iii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective[;], *or who, in the case of a full-time bankruptcy judge or United States magistrate, notifies the Director in writing of his or her intention to come within the purview of this section on or before the date of an election to retire under section 377 of this title;*

(2) "retirement salary" means:

(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

(B) in the case of a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, (i) an annuity paid under subsection (a) of section 373 of this title or (ii) compensation paid under paragraph (4) of subsection (c) of section 373 of this title;

(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (c) or (d) of section 627 of this title; [and]

(E) in the case of an administrative assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title; *and*

(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title;

* * * * * * *

§ 377. Retirement of bankruptcy judges and magistrates

(a) A bankruptcy judge or magistrate to whom this section applies who retires after serving at least 14 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate left office.

(b) A bankruptcy judge or magistrate to whom this section applies who retires after serving less than 14 years but at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive,

upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that proportion of the salary being received at the time the judge or magistrate left office which the aggregate number of years of service bears to 14.

(c) A bankruptcy judge or magistrate to whom this section applies who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (e), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14 years, bears to 14.

(d) A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

(e) A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5.

(f)(1) For purposes of calculating an annuity under this section—

(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

(B) each month of service shall be credited as one-twelfth of a year.

(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a United States magistrate to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

(B) In the case of an individual who is a magistrate to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a bankruptcy judge to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

(g) This section applies to—

(1) any bankruptcy judge appointed under—

(A) section 152 of this title;

(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682); or

(C) section 404 of the Act of November 6, 1978 (Public Law 95-598, 92 Stat. 2549); and

(2) any United States magistrate appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.

CHAPTER 43—UNITED STATES MAGISTRATE

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§ 631. Appointment and tenure

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(e) The appointment of any individual as a full-time magistrate shall be for a term of eight years, and the appointment of any individuals as a part-time magistrate shall be for a term of four years, except that the term of a full-time or part-time magistrate appointed under subsection [(j)] *(k)* shall expire upon—

(1) the expiration of the absent magistrate's term,

(2) the reinstatement of the absent magistrate in regular service in office as a magistrate,

(3) the failure of the absent magistrate to make timely application under subsection [(i)] *(j)* of this section for reinstatement in regular service in office as a magistrate after discharge or release from military service,

(4) the death or resignation of the absent magistrate, or

(5) the removal from office of the absent magistrate pursuant to subsection [(h)] *(i)* of this section,

whichever may first occur.

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§ 636. Jurisdiction, powers, and temporary assignment

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(h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in *section 377 of this title or in* subchapter III of chapter 83, and chapter 84, of title 5 *which are applicable to such magistrate.* The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate, shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such re-

quirement upon appointment or reappointment as a magistrate under section 631.

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TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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CHAPTER 83—RETIREMENT

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Subchapter III—Civil Service Retirement

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§ 8334. Deductions, contributions, and deposits

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(i)(1) * * *

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(4) Notwithstanding any other provision of law, a judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magistrates Act of 1987 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump sum credit under section 8342(a) of this title.

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Subchapter I—General Provisions

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§ 8402. Federal Employees' Retirement System; exclusions

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(c)(1) * * *

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(5) A judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magistrates Act of 1987 shall be excluded from the operation of this chapter if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a credit under section 8424 of this title.

IX. Vote of the Committee

On December 3, 1987, a quorum being present, the committee, by voice vote, ordered the bill reported, without amendment.

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